

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 18, 2021

Mr. President:
Mr. Speaker:
The Conference Committee, to which was referred

SB841

By: Thompson of the Senate and Echols of the House




Title: Alcoholic beverages; business interests; prohibited acts for manufacturers. Effective date.




together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

advise that the conferees have been unable to agree.

Respectfully submitted,

SENATE CONFEREES:


Thompson

Coleman

David


Dossett (J.J.)

Floyd

Treat

HOUSE CONFEREES:

Conference Committee on Business and Commerce

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 841 By: Thompson of the Senate
3 and
4 Echols of the House
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7 An Act relating to alcoholic beverages; amending
8 Sections 89, Chapter 366, O.S.L. 2016, as last
9 amended by Section 1, Chapter 431, O.S.L. 2019,
10 Section 90, Chapter 366, O.S.L. 2016, as amended by
11 Section 23, Chapter 322, O.S.L. 2019, and Section 91,
12 Chapter 366, O.S.L. 2016, as amended by Section 24,
13 Chapter 322, O.S.L. 2019 (37A O.S. Supp. 2020,
14 Sections 3-119, 3-120 and 3-121), which relate to
15 business interests and acts prohibited for
16 manufacturers or brewers; modifying language;
17 limiting prohibition to Oklahoma licensed
18 manufacturers or brewers; providing certain exception
19 to ownership interests; prohibiting selling certain
20 products with common ownership interests; and
21 providing an effective date.

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25 AMENDMENT NO. 1. Delete the title, enacting clause and entire bill
and replace with:

26 "An Act relating to alcoholic beverages; amending
27 Section 89, Chapter 366, O.S.L. 2016, as last
28 amended by Section 1, Chapter 431, O.S.L. 2019,
29 Section 90, Chapter 366, O.S.L. 2016, as amended by
30 Section 23, Chapter 322, O.S.L. 2019, and Section
31 91, Chapter 366, O.S.L. 2016, as amended by Section
32 24, Chapter 322, O.S.L. 2019 (37A O.S. Supp. 2020,
33 Sections 3-119, 3-120 and 3-121), which relate to
34 business interests and acts prohibited for
35 manufacturers; modifying language; limiting
36 prohibition to Oklahoma licensed manufacturers;

1 providing certain exception to ownership interests;
2 prohibiting selling certain products with common
3 ownership interests; and providing an effective
4 date.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. AMENDATORY Section 89, Chapter 366, O.S.L.
7 2016, as last amended by Section 1, Chapter 431, O.S.L. 2019 (37A
8 O.S. Supp. 2020, Section 3-119), is amended to read as follows:

9 Section 3-119. A. It shall be unlawful for any Oklahoma
10 licensed manufacturer, or brewer, or any wine and spirits
11 wholesaler, beer distributor or person authorized to sell alcoholic
12 beverages to a wholesaler, or any employee, officer, director,
13 stockholder owning fifteen percent (15%) or more of the stock, any
14 type of partner, manager, member or agent thereof, to directly or
15 indirectly:

16 1. Have any financial interest in any premises upon which any
17 alcoholic beverage is sold at retail or in any business connected
18 with the retailing of alcoholic beverages; provided, nothing in ~~this~~
19 ~~act~~ the Oklahoma Alcoholic Beverage Control Act shall prohibit the
20 operation of a mixed beverage licensee, beer and wine licensee or
21 caterer licensee by an entity which has common owners with the
22 holder of a small brewer license or a brewpub license;

23 2. Lend any money or other thing of value, or to make any gift
24 or offer any gratuity, to any package store, retail wine, retail

1 beer, mixed beverage, beer and wine, public event or bottle club
2 licensee or caterer;

3 3. Guarantee any loan or the repayment of any financial
4 obligation of any retailer, mixed beverage, beer and wine, public
5 event or bottle club licensee or caterer;

6 4. Require any wine and spirits wholesaler, beer distributor,
7 retailer, mixed beverage, on-premises beer and wine licensee, public
8 event or caterer to purchase and dispose of any quota of alcoholic
9 beverages, or to require any retailer to purchase any kind, type,
10 size, container or brand of alcoholic beverages in order to obtain
11 any other kind, type, size, container or brand of alcoholic
12 beverages;

13 5. Sell to any retailer, mixed beverage, on-premises beer and
14 wine licensee, public event or caterer any alcoholic beverage on
15 consignment, or upon condition, or with the privilege of return, or
16 on any condition other than a bona fide sale; provided, the
17 following shall not be considered a violation of this paragraph:

- 18 a. delivery in good faith, through mistake, inadvertence
19 or oversight, of an alcoholic beverage that was not
20 ordered by a retailer, mixed beverage licensee, on-
21 premises beer and wine licensee, caterer, public event
22 or special event licensee to such licensee,
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1 b. replacement of product breakage that occurred while
2 the alcoholic beverages were in transit from the
3 wholesaler to the licensee, or

4 c. replacement of cork-tainted wine that makes the
5 product unsaleable as long as the licensee notifies
6 the wine and spirits wholesaler of the defect in
7 writing within ninety (90) days after delivery of the
8 product; or

9 6. Extend credit to any retailer, other than holders of Federal
10 Liquor Stamps on United States government reservations and
11 installations, mixed beverage, public event or on-premises beer and
12 wine licensee or caterer, other than a state lodge located in a
13 county which has approved the retail sale of alcoholic beverages by
14 the individual drink for on-premises consumption. The acceptance of
15 a postdated check or draft or the failure to deposit for collection
16 a current check or draft by the second banking day after receipt
17 shall be deemed an extension of credit. Violation of this section
18 shall be grounds for suspension of the license.

19 B. Notwithstanding any statutory provision to the contrary, the
20 holder of an Oklahoma Retail Beer or Retail Wine License who was
21 licensed and permitted to sell low-point beer for off-premises
22 consumption until the passage of State Question 792 on November 8,
23 2016, shall not be prohibited from holding an ownership interest in
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1 a manufacturer whose products are made outside of this state,
2 provided:

3 1. This right shall only apply to the ownership interests in
4 the manufacturer that were held by the Oklahoma licensed retailer,
5 or its successor in interest, as of November 8, 2016; and

6 2. The Oklahoma licensed retailer that is commonly owned by a
7 manufacturer does not offer for sale at its Oklahoma retail
8 locations any wine or spirits that are made by the commonly owned
9 manufacturer.

10 SECTION 2. AMENDATORY Section 90, Chapter 366, O.S.L.
11 2016, as amended by Section 23, Chapter 322, O.S.L. 2019 (37A O.S.
12 Supp. 2020, Section 3-120), is amended to read as follows:

13 Section 3-120. A. No mixed beverage, beer and wine, caterer,
14 public event or bottle club licensee, partner in any type of
15 partnership, manager or member of a limited liability company,
16 officer, director or stockholder of any corporate licensee owning
17 more than fifteen percent (15%) of the stock shall have any right,
18 title, lien, claim or interest, financial or otherwise in, upon or
19 to the premises, equipment, business or merchandise of any package
20 store, beer distributor, wholesaler, brewer, or Oklahoma licensed
21 manufacturer ~~or wholesaler~~. The provisions of this section shall
22 not prohibit a person who is an officer or director of a fraternal
23 or veteran's organization which is a tax exempt organization under
24 Section 501(c)(8), (10) or (19) of the Internal Revenue Code and

1 which holds a license issued by the ABLE Commission from having a
2 right, title, lien, claim or interest in the premises, equipment,
3 business or merchandise of a package store.

4 B. Notwithstanding any statutory provision to the contrary, the
5 holder of an Oklahoma Retail Beer or Retail Wine License who was
6 licensed and permitted to sell low-point beer for off-premises
7 consumption until the passage of State Question 792 on November 8,
8 2016, shall not be prohibited from holding an ownership interest in
9 a manufacturer whose products are made outside of this state,
10 provided:

11 1. This right shall only apply to the ownership interests in
12 the manufacturer that were held by the Oklahoma licensed retailer,
13 or its successor in interest, as of November 8, 2016; and

14 2. The Oklahoma licensed retailer that is commonly owned by a
15 manufacturer does not offer for sale at its Oklahoma retail
16 locations any wine or spirits that are made by the commonly owned
17 manufacturer.

18 SECTION 3. AMENDATORY Section 91, Chapter 366, O.S.L.
19 2016, as amended by Section 24, Chapter 322, O.S.L. 2019 (37A O.S.
20 Supp. 2020, Section 3-121), is amended to read as follows:

21 Section 3-121. A. No Oklahoma licensed manufacturer, or
22 brewer, or any wine and spirits wholesaler, beer distributor,
23 partner in any type of partnership, manager or member of a limited
24 liability company, or officer, director or stockholder of any

1 nonresident seller, brewer, or manufacturer licensee, owning more
2 than fifteen percent (15%) of the stock shall have any right, title,
3 claim or interest, financial or otherwise in, upon or to the
4 premises, equipment, business or merchandise of any mixed beverage,
5 beer and wine, caterer, public event or bottle club licensee.

6 B. Notwithstanding any statutory provision to the contrary, the
7 holder of an Oklahoma Retail Beer or Retail Wine License who was
8 licensed and permitted to sell low-point beer for off-premises
9 consumption until the passage of State Question 792 on November 8,
10 2016, shall not be prohibited from holding an ownership interest in
11 a manufacturer whose products are made outside of this state,
12 provided:

13 1. This right shall only apply to the ownership interests in
14 the manufacturer that were held by the Oklahoma licensed retailer,
15 or its successor in interest, as of November 8, 2016; and

16 2. The Oklahoma licensed retailer that is commonly owned by a
17 manufacturer does not offer for sale at its Oklahoma retail
18 locations any wine or spirits that are made by the commonly owned
19 manufacturer.

20 SECTION 4. This act shall become effective November 1, 2021."
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1 Passed the House of Representatives the 21st day of April, 2021.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2021.

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9 Presiding Officer of the Senate
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1 ENGROSSED SENATE
2 BILL NO. 841

By: Thompson of the Senate

3 and

4 Echols of the House

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6 An Act relating to alcoholic beverages; amending
7 Sections 89, Chapter 366, O.S.L. 2016, as last
8 amended by Section 1, Chapter 431, O.S.L. 2019,
9 Section 90, Chapter 366, O.S.L. 2016, as amended by
10 Section 23, Chapter 322, O.S.L. 2019, and Section 91,
11 Chapter 366, O.S.L. 2016, as amended by Section 24,
12 Chapter 322, O.S.L. 2019 (37A O.S. Supp. 2020,
13 Sections 3-119, 3-120 and 3-121), which relate to
14 business interests and acts prohibited for
15 manufacturers or brewers; modifying language;
16 limiting prohibition to Oklahoma licensed
17 manufacturers or brewers; providing certain exception
18 to ownership interests; prohibiting selling certain
19 products with common ownership interests; and
20 providing an effective date.

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22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 5. AMENDATORY Section 89, Chapter 366, O.S.L.
24 2016, as last amended by Section 1, Chapter 431, O.S.L. 2019 (37A
25 O.S. Supp. 2020, Section 3-119), is amended to read as follows:

26 Section 3-119. A. It shall be unlawful for any Oklahoma
27 licensed manufacturer, or brewer, or any wine and spirits
28 wholesaler, beer distributor or person authorized to sell alcoholic
29 beverages to a wholesaler, or any employee, officer, director,
30 stockholder owning fifteen percent (15%) or more of the stock, any

1 type of partner, manager, member or agent thereof, to directly or
2 indirectly:

3 1. Have any financial interest in any premises upon which any
4 alcoholic beverage is sold at retail or in any business connected
5 with the retailing of alcoholic beverages; provided, nothing in ~~this~~
6 ~~act~~ the Oklahoma Alcoholic Beverage Control Act shall prohibit the
7 operation of a mixed beverage licensee, beer and wine licensee or
8 caterer licensee by an entity which has common owners with the
9 holder of a small brewer license or a brewpub license;

10 2. Lend any money or other thing of value, or to make any gift
11 or offer any gratuity, to any package store, retail wine, retail
12 beer, mixed beverage, beer and wine, public event or bottle club
13 licensee or caterer;

14 3. Guarantee any loan or the repayment of any financial
15 obligation of any retailer, mixed beverage, beer and wine, public
16 event or bottle club licensee or caterer;

17 4. Require any wine and spirits wholesaler, beer distributor,
18 retailer, mixed beverage, on-premises beer and wine licensee, public
19 event or caterer to purchase and dispose of any quota of alcoholic
20 beverages, or to require any retailer to purchase any kind, type,
21 size, container or brand of alcoholic beverages in order to obtain
22 any other kind, type, size, container or brand of alcoholic
23 beverages;

1 5. Sell to any retailer, mixed beverage, on-premises beer and
2 wine licensee, public event or caterer any alcoholic beverage on
3 consignment, or upon condition, or with the privilege of return, or
4 on any condition other than a bona fide sale; provided, the
5 following shall not be considered a violation of this paragraph:

- 6 a. delivery in good faith, through mistake, inadvertence
7 or oversight, of an alcoholic beverage that was not
8 ordered by a retailer, mixed beverage licensee, on-
9 premises beer and wine licensee, caterer, public event
10 or special event licensee to such licensee,
- 11 b. replacement of product breakage that occurred while
12 the alcoholic beverages were in transit from the
13 wholesaler to the licensee, or
- 14 c. replacement of cork-tainted wine that makes the
15 product unsaleable as long as the licensee notifies
16 the wine and spirits wholesaler of the defect in
17 writing within ninety (90) days after delivery of the
18 product; or

19 6. Extend credit to any retailer, other than holders of Federal
20 Liquor Stamps on United States government reservations and
21 installations, mixed beverage, public event or on-premises beer and
22 wine licensee or caterer, other than a state lodge located in a
23 county which has approved the retail sale of alcoholic beverages by
24 the individual drink for on-premises consumption. The acceptance of

1 a postdated check or draft or the failure to deposit for collection
2 a current check or draft by the second banking day after receipt
3 shall be deemed an extension of credit. Violation of this section
4 shall be grounds for suspension of the license.

5 B. Notwithstanding any statutory provision to the contrary, a
6 manufacturer or brewer whose products are made outside this state
7 shall not be prohibited from having any ownership interest in an
8 Oklahoma licensed retailer; provided, the Oklahoma retailer that is
9 commonly owned by a manufacturer or brewer does not offer for sale
10 at its Oklahoma retail locations any beer, wine or spirits that are
11 made by the manufacturer or brewer within or outside this state.

12 SECTION 6. AMENDATORY Section 90, Chapter 366, O.S.L.
13 2016, as amended by Section 23, Chapter 322, O.S.L. 2019 (37A O.S.
14 Supp. 2020, Section 3-120), is amended to read as follows:

15 Section 3-120. A. No mixed beverage, beer and wine, caterer,
16 public event or bottle club licensee, partner in any type of
17 partnership, manager or member of a limited liability company,
18 officer, director or stockholder of any corporate licensee owning
19 more than fifteen percent (15%) of the stock shall have any right,
20 title, lien, claim or interest, financial or otherwise in, upon or
21 to the premises, equipment, business or merchandise of any package
22 store, beer distributor, wholesaler, brewer, or Oklahoma licensed
23 manufacturer or wholesaler. The provisions of this section shall
24 not prohibit a person who is an officer or director of a fraternal

1 or veteran's organization which is a tax exempt organization under
2 Section 501(c)(8), (10) or (19) of the Internal Revenue Code and
3 which holds a license issued by the ABLE Commission from having a
4 right, title, lien, claim or interest in the premises, equipment,
5 business or merchandise of a package store.

6 B. Notwithstanding any statutory provision to the contrary, a
7 manufacturer or brewer whose products are made outside this state
8 shall not be prohibited from having any ownership interest in an
9 Oklahoma licensed retailer; provided, the Oklahoma retailer that is
10 commonly owned by a manufacturer or brewer does not offer for sale
11 at its Oklahoma retail locations any beer, wine or spirits that are
12 made by the manufacturer or brewer within or outside this state.

13 SECTION 7. AMENDATORY Section 91, Chapter 366, O.S.L.
14 2016, as amended by Section 24, Chapter 322, O.S.L. 2019 (37A O.S.
15 Supp. 2020, Section 3-121), is amended to read as follows:

16 Section 3-121. A. No Oklahoma licensed manufacturer, or
17 brewer, or any wine and spirits wholesaler, beer distributor,
18 partner in any type of partnership, manager or member of a limited
19 liability company, or officer, director or stockholder of any
20 nonresident seller, brewer, or manufacturer licensee, owning more
21 than fifteen percent (15%) of the stock shall have any right, title,
22 claim or interest, financial or otherwise in, upon or to the
23 premises, equipment, business or merchandise of any mixed beverage,
24 beer and wine, caterer, public event or bottle club licensee.

B. Notwithstanding any statutory provision to the contrary, a manufacturer or brewer whose products are made outside this state shall not be prohibited from having any ownership interest in an Oklahoma licensed retailer; provided, the Oklahoma retailer that is commonly owned by a manufacturer or brewer does not offer for sale at its Oklahoma retail locations any beer, wine or spirits that are made by the manufacturer or brewer within or outside this state.

SECTION 8. This act shall become effective November 1, 2021.

Passed the Senate the 9th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2021.

Presiding Officer of the House
of Representatives