

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2631

By: Echols

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7 COMMITTEE SUBSTITUTE

8 An Act relating to alcoholic beverages; amending 37A
9 O.S. 2021, Section 3-116, which relates to the sale
10 of alcoholic beverages; providing that wine and
spirits wholesaler are authorized to fill orders non-
sequentially; and providing an effective date.

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

14 SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-116, is
15 amended to read as follows:

16 Section 3-116. A. Any manufacturer or subsidiary of a
17 manufacturer who markets its products solely through a subsidiary or
18 subsidiaries, a distiller, rectifier, bottler, winemaker or importer
19 of alcoholic beverages, bottled or made in a foreign country, either
20 within or without this state, may sell such brands or kinds of
21 alcoholic beverages to every licensed wine and spirits wholesaler
22 who desires to purchase the same, on the same price basis and
23 without discrimination or inducements, and shall further be required
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1 to sell such beverages only to those persons licensed as wine and
2 spirits wholesalers.

3 B. The provisions of subsection A of this section shall not
4 apply to a brewer except as otherwise stated herein. In the event a
5 brewer, who has entered into territorial distribution agreements
6 with beer distributors in this state, markets wine and spirits
7 products in this state either itself or through a subsidiary or
8 affiliate, then such brewer, subsidiary or affiliate may elect to
9 designate beer distributors, with whom it has entered into
10 territorial distribution agreements, as its designated wholesalers
11 for any wine and spirit products to be sold by the brewer,
12 subsidiary or affiliate within said beer distributors' existing
13 territories, provided such beer distributors must also hold a wine
14 and spirits wholesaler license. In such event, the beer
15 distributors shall be deemed designated wholesalers for the
16 territory with respect to the designated products. Provided, in the
17 event a beer distributor has not obtained a wine and spirits
18 license, has elected not to sell wine and spirits in its respective
19 territory or, in the brewer's commercially reasonable discretion, is
20 not suitable to sell wine and spirits in its respective territory,
21 then the brewer, subsidiary or affiliate may extend the territory of
22 an existing beer distributor, with whom it has entered into a
23 territorial distribution agreement and who holds a wine and spirits
24 wholesaler license, for said territory. For purposes of this

1 subsection only, the phrase "subsidiary or affiliate" shall mean any
2 entity that the brewer controls, is controlled by, or is under
3 common control with, during the time that the wine and spirits
4 brands are offered for sale in this state, and "control" shall mean
5 ownership of more than fifty percent (50%) of the voting securities
6 or assets of, or the ability to dictate the material operations of,
7 another entity. If the brewer, subsidiary or affiliate sells the
8 wine and spirits brands to a manufacturer other than one that would
9 otherwise fall within the provisions of this subsection, then the
10 rights provided in this subsection which relate to the wine and
11 spirits brands shall terminate. The rights provided to beer
12 distributors pursuant to Section 3-111 of this title shall not be
13 extended to apply to the wine or spirits brands distributed pursuant
14 to this subsection.

15 C. No manufacturer shall require a wine and spirits wholesaler
16 to purchase any alcoholic beverages or any goods, wares or
17 merchandise as a condition to the wine and spirits wholesaler
18 obtaining or being entitled to purchase any alcoholic beverages.

19 Violation of this section shall be a misdemeanor. Conviction
20 hereunder shall automatically revoke the violator's license.

21 D. In the event a manufacturer or nonresident seller has not
22 designated a designated wholesaler to sell its products in the
23 state, the nondesignated products shall be posted in accordance with
24 the following:

1 1. On the first business day of each month, the manufacturer
2 shall post with the ABLE Commission the price of all wine and
3 spirits it proposes to offer for sale to licensed wine and spirit
4 wholesalers in this state. All prices shall become effective on the
5 first business day of the following month and shall remain in effect
6 and unchanged for a period of not less than one (1) month. The
7 posting shall be submitted on a form approved by the ABLE Commission
8 and shall identify the brand, size, alcohol content and price of
9 each item intended to be offered for sale. No change or
10 modification of the posted price shall be permitted except upon
11 written permission from the ABLE Commission based on good cause
12 shown;

13 2. When a new item is registered, or an old item is
14 discontinued, or any change is made by a manufacturer or nonresident
15 seller as to price, age, proof, label or type of bottle of any item
16 offered for sale in this state, such new item, discontinued item or
17 change in price, age, proof, label or type of bottle of any item
18 shall be listed separately on the cover page of the price schedule
19 and, in the case of prices changed, shall reflect both the old and
20 the new price of the item changed. All new items and changes as to
21 age, proof, label or type of bottle in which any item is offered for
22 sale shall first be submitted in writing to the ABLE Commission for
23 approval under such requirements as it may deem proper. Approval or
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1 disapproval of price changes shall not be required if filed in
2 conformity with the provisions of this subsection.

3 a. In addition to the foregoing requirements, the
4 manufacturer shall, at the same time, on regular forms
5 provided by the ABLE Commission, re-register all items
6 of alcoholic beverage which the manufacturer had
7 registered and offered for sale in this state during
8 the previous price period.

9 b. A short form of price posting may be permitted by the
10 ABLE Commission for any price period in which no new
11 item is offered or old item discontinued, or change is
12 made in the price, age, proof, label or type of bottle
13 of any item offered by any manufacturer. Such short
14 form shall contain only such statements as the
15 Director may require or permit;

16 3. The brand name, size, proof and type of alcoholic beverages
17 must be shown on each container sold in this state;

18 4. No brand of alcoholic beverage shall be listed on a price
19 list or posting in more than one place, or offered for sale by more
20 than one method, or at more than one price, except as provided
21 hereafter:

22 a. a manufacturer who has posted F.O.B. prices from a
23 foreign shipping point shall also list the same
24 item(s) at an F.O.B. point within the continental

1 United States. Only one United States F.O.B. point
2 shall be permitted, and

3 b. a manufacturer may list on their price list or posting
4 an item of specific size that may be packaged in more
5 than one type or design container, provided that the
6 containers being offered have been approved by the
7 ABLE Commission;

8 5. The manufacturer shall sell to the wine and spirits
9 wholesalers all items of wine and spirits at the current posted
10 price in effect on the date of the shipment as shown on the
11 manifest, bill of lading or invoice;

12 6. A full and correct copy of each said price registration
13 shall be transmitted to wine and spirits wholesalers on the same day
14 such prices are filed with or mailed to the ABLE Commission. Proof
15 of such mailing or delivery shall be furnished the ABLE Commission
16 by the manufacturer with the price registration or upon request;

17 7. The sale, or offer to sell, of any item of alcoholic
18 beverage by a manufacturer to a wine and spirits wholesaler at a
19 price not in compliance with the price posted with the ABLE
20 Commission may be deemed a violation; and

21 8. This subsection shall not apply to a manufacturer that has
22 designated a wine and spirits wholesaler to sell its product in the
23 state or a brewer who has appointed a beer distributor as a
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1 designated wholesaler pursuant to subsection B of ~~Section 3-116~~ of
2 ~~this title~~ of this section, with respect to designated products.

3 E. Every wine and spirits wholesaler is authorized to fill
4 orders non-sequentially. These activities shall not constitute a
5 violation of this title or any rule promulgated under this title.

6 SECTION 2. This act shall become effective July 1, 2023.

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