

An Act

ENROLLED HOUSE
BILL NO. 2631

By: Echols of the House

and

Rosino of the Senate

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 3-116, which relates to the sale of alcoholic beverages; providing that wine and spirits wholesalers are authorized to ship and fill orders non-sequentially under certain conditions; defining term; providing for certain notice between manufacturers, wholesalers, and ABLE Commission; and requiring ABLE Commission to provide certain information.

SUBJECT: Alcoholic beverages

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

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

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

B. The provisions of subsection A of this section shall not apply to a brewer except as otherwise stated herein. In the event a brewer, who has entered into territorial distribution agreements with beer distributors in this state, markets wine and spirits products in this state either itself or through a subsidiary or

affiliate, then such brewer, subsidiary or affiliate may elect to designate beer distributors, with whom it has entered into territorial distribution agreements, as its designated wholesalers for any wine and spirit products to be sold by the brewer, subsidiary or affiliate within ~~said~~ the beer distributors' existing territories, provided such beer distributors must also hold a wine and spirits wholesaler license. In such event, the beer distributors shall be deemed designated wholesalers for the territory with respect to the designated products. Provided, in the event a beer distributor has not obtained a wine and spirits license, has elected not to sell wine and spirits in its respective territory or, in the brewer's commercially reasonable discretion, is not suitable to sell wine and spirits in its respective territory, then the brewer, subsidiary or affiliate may extend the territory of an existing beer distributor, with whom it has entered into a territorial distribution agreement and who holds a wine and spirits wholesaler license, for ~~said~~ the territory. For purposes of this subsection only, the phrase "subsidiary or affiliate" shall mean any entity that the brewer controls, is controlled by, or is under common control with, during the time that the wine and spirits brands are offered for sale in this state, and "control" shall mean ownership of more than fifty percent (50%) of the voting securities or assets of, or the ability to dictate the material operations of, another entity. If the brewer, subsidiary or affiliate sells the wine and spirits brands to a manufacturer other than one that would otherwise fall within the provisions of this subsection, then the rights provided in this subsection which relate to the wine and spirits brands shall terminate. The rights provided to beer distributors pursuant to Section 3-111 of this title shall not be extended to apply to the wine or spirits brands distributed pursuant to this subsection.

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

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

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

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

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

- a. In addition to the foregoing requirements, the manufacturer shall, at the same time, on regular forms provided by the ABLE Commission, re-register all items of alcoholic beverage which the manufacturer had registered and offered for sale in this state during the previous price period.
- b. A short form of price posting may be permitted by the ABLE Commission for any price period in which no new item is offered or old item discontinued, or change is made in the price, age, proof, label or type of bottle of any item offered by any manufacturer. Such short form shall contain only such statements as the Director may require or permit;

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

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

- a. a manufacturer who has posted F.O.B. prices from a foreign shipping point shall also list the same item(s) at an F.O.B. point within the continental United States. Only one United States F.O.B. point shall be permitted, and
- b. a manufacturer may list on their price list or posting an item of specific size that may be packaged in more than one type or design container, provided that the containers being offered have been approved by the ABLE Commission;

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

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

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

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

E. Every wine and spirits wholesaler is authorized:

1. To ship orders to retailers non-sequentially; and
2. To fill orders non-sequentially only on products that have been designated as being in short supply.

As used in this subsection, "short supply" means those individual brand labels of alcoholic beverages normally supplied by the manufacturer or manufacturers that, for whatever reason, lack sufficient supply to fully satisfy the demand of the Oklahoma retail and/or on-premises market.

F. Upon the manufacturer notifying the wholesalers of products designated as short supply, the wholesaler shall also then notify the ABLE Commission as soon as practical.

G. The ABLE Commission shall publish a list of every product designated as short supply by the Director on its website every thirty (30) days. After thirty (30) days, the wholesaler shall send an updated notice to the ABLE Commission if the product or products are in short supply. The ABLE Commission shall remove those products if notification is not received. These activities shall not constitute a violation of this title or any rule promulgated under this title.

Passed the House of Representatives the 9th day of May, 2023.

Presiding Officer of the House
of Representatives

Passed the Senate the 25th day of April, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____