

1 **SENATE FLOOR VERSION**

2 April 10, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2631

6 By: Echols of the House

7 and

8 Rosino of the Senate

9 [ alcoholic beverages - wine and spirits  
10 wholesalers ]

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

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

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

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

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

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

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

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

23 1. On the first business day of each month, the manufacturer  
24 shall post with the ABLE Commission the price of all wine and

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

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

24

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

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

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

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

20 a. a manufacturer who has posted F.O.B. prices from a  
21 foreign shipping point shall also list the same  
22 item(s) at an F.O.B. point within the continental  
23 United States. Only one United States F.O.B. point  
24 shall be permitted, and

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

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

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

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

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

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

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE  
5 April 10, 2023 - DO PASS AS AMENDED  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24