

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2843 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Trey Caldwell _____

Reading Clerk

1 STATE OF OKLAHOMA

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

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2843

By: Caldwell (Trey)

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to alcoholic beverages; amending 37A
9 O.S. 2021, Sections 2-108, 3-109, 3-123 and 5-132,
10 which relate to alcoholic beverages; providing that a
11 beer distributor licensee may store alcoholic
12 beverages of any kind, nonalcoholic beverages, and
13 other goods, wares, and merchandise in any warehouses
14 owned or leased by the beer distributor; providing
15 that a beer distributor is not obligated to segregate
16 the products in the warehouse; providing that a
17 leased warehouse includes a leased space within a
18 multi-tenant building under certain circumstances;
19 providing that employees of a beer distributor may
20 transport beer to licensed retailers; modifying
21 penalties and providing a remedy to cure such
22 violations; providing it shall not be deemed an
23 inducement or a discriminatory action for certain
24 license holders to establish individualized servicing
and delivery schedules for their retailers based on
the retailer's actual needs; expanding license
holders who must submit an application for
registration of a brand label; providing that certain
license holders shall not be required to verify
registration and shall not be penalized for any
applicant's failure to register its brand label; and
providing an effective date.

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

1 SECTION 1. AMENDATORY 37A O.S. 2021, Section 2-108, is
2 amended to read as follows:

3 Section 2-108. A. A beer distributor license shall authorize
4 the holder thereof:

5 1. To purchase and import into this state cider from persons
6 authorized to sell the same who are the holders of manufacturer's
7 licenses, and their agents who are the holders of manufacturer's
8 agent licenses;

9 2. To purchase and import into this state beer or cider from
10 persons authorized to sell the same who are the holders of brewer's
11 or small brewer's licenses;

12 3. To purchase beer and cider from licensed beer distributors
13 in this state;

14 4. To sell in retail containers to retailers, on-premises beer
15 and wine, mixed beverage, caterer, special event, public event,
16 hotel beverage and airline/railroad beverage licensees, or any other
17 licensee permitted to sell beer to consumers in this state, beer and
18 cider which has been received, unloaded and stored at the holder's
19 self-owned or leased and self-operated warehouses before such sale,
20 unless otherwise permitted by this section;

21 5. To sell beer and cider in this state to beer distributors
22 and out of this state to qualified persons, including federal
23 instrumentalities and voluntary associations of military personnel
24

1 on federal enclaves in this state over which this state has ceded
2 jurisdiction;

3 6. To donate beer and cider to organizations, associations or
4 nonprofit corporations organized for political, fraternal,
5 charitable, religious or social purposes or to charitable events;
6 and

7 7. To transport wine, spirits, beer and cider in vehicles
8 owned, leased or operated by the beer distributor, a subsidiary of
9 the beer distributor, or its agent, in addition to any nonalcoholic
10 items. Provided, if the beer distributor transports wine and
11 spirits, a valid wine and spirits wholesaler license must be
12 maintained by the beer distributor or affiliated entity having
13 common ownership with the licensed beer distributor; and

14 8. To store alcoholic beverages of any kind, nonalcoholic
15 beverages, and other goods, wares, and merchandise related to the
16 foregoing, in any number of warehouses owned or leased by the beer
17 distributor as determined by the beer distributor. There shall be
18 no obligation to segregate the products in the warehouse by alcohol
19 content or type of product. For purposes of this section, a leased
20 warehouse includes a leased space within a multi-tenant building as
21 long as such leased space is a discrete, enclosed area operated and
22 controlled exclusively by the beer distributor.

23 B. In the event that no in-state beer distributor for a
24 particular brewer or manufacturer is willing to deliver beer or

1 | cider to a county or counties located within the state, the ABLE
2 | Commission may grant an economic hardship exemption to an out-of-
3 | state beer distributor for a particular brewer and waive the at-rest
4 | requirement set forth in this section, upon a good-faith showing
5 | that:

6 | 1. It is economically infeasible or impractical for an in-state
7 | beer distributor for a particular brewer to deliver to the county or
8 | counties due to remoteness, or population, or both;

9 | 2. No in-state beer distributor of a particular brewer or
10 | manufacturer objects to the waiver within thirty (30) days of
11 | receiving written notice of the economic hardship application sent
12 | by the ABLE Commission; and

13 | 3. The out-of-state beer distributor agrees to pay all
14 | necessary licensing fees and remit all applicable taxes to the State
15 | of Oklahoma.

16 | C. The economic hardship exemption provided for in subsection B
17 | of this section shall renew annually, provided that no in-state beer
18 | distributor for a particular brewer or manufacturer submits an
19 | executed distribution agreement to assume responsibility to
20 | distribute the beer in the subject county or counties at least sixty
21 | (60) days prior to the renewal date of the exemption. The in-state
22 | beer distributor who has executed a distribution agreement to assume
23 | responsibility to distribute beer in the subject territory shall
24 | compensate the out-of-state distributor the fair market value of the

1 distribution rights of the territory as determined pursuant to
2 Section 3-108 of this title.

3 D. Provided, nothing in this section shall require an Oklahoma
4 licensed beer distributor with an Oklahoma designated territory on
5 the effective date of this act to meet the hardship provisions in
6 subsections B and C of this section to continue to operate as a
7 licensed Oklahoma beer distributor.

8 SECTION 2. AMENDATORY 37A O.S. 2021, Section 3-109, is
9 amended to read as follows:

10 Section 3-109. In order to regulate distribution of beer in
11 this state and assure collection of all applicable taxes and fees,
12 all beer sold in this state by a licensed distributor shall only be
13 transported within this state to the licensed address and location
14 of a licensed retailer or between the licensed addresses and
15 locations of licensed retailers by ~~a marked conveyance~~ conveyances
16 owned or leased by a licensed distributor or its employees.

17 SECTION 3. AMENDATORY 37A O.S. 2021, Section 3-123, is
18 amended to read as follows:

19 Section 3-123. A. It shall be unlawful for any person
20 privileged to sell alcoholic beverages to wholesalers, beer
21 distributors or retailers:

22 1. To discriminate, directly or indirectly, in price between
23 one wine and spirits wholesaler and another wine and spirits
24 wholesaler, when that manufacturer has not designated a single wine

1 and spirits wholesaler, or between one retailer and another retailer
2 purchasing alcoholic beverages bearing the same brand or trade name
3 and of like age and quality, unless otherwise provided by law; or

4 2. To grant, directly or indirectly, any discount, rebate, free
5 goods, allowance or other inducement.

6 B. The ABLE Commission is hereby authorized to promulgate rules
7 which are necessary to carry out the purpose of this section and to
8 prevent its circumvention by offering or giving of any rebate,
9 allowance, free goods, discount or any other thing or service of
10 value; provided, the posting or invoicing of charges per order for
11 processing minimum orders or per case for the handling or repacking
12 of goods by wine and spirits wholesalers and beer distributors for
13 sales in less than full case lots shall not constitute a violation
14 of this section.

15 C. For the violation of any provision of this section or of any
16 rule duly promulgated under this section, the ABLE Commission may
17 issue a written warning, fine, suspend or revoke a license as
18 follows:

19 1. For a first offense, ~~not exceeding ten (10) days' suspension~~
20 ~~of license~~ a written warning which may be accompanied by a fine not
21 to exceed Five Thousand Dollars (\$5,000.00);

22 2. For a second offense, not exceeding ~~thirty (30)~~ ten (10)
23 days' suspension of license; and

24

1 3. For a third offense, the ABLE Commission shall revoke the
2 license.

3 Provided, however, prior to suspending or revoking a license,
4 the ABLE Commission shall first provide written notice to a licensee
5 of the violation and a period of ninety (90) days following such
6 notice to cure or remedy such violation. For purposes of this
7 section, a "second offense" and "third offense" shall mean
8 violations that are related to or arising out of and occurring
9 within twelve (12) months of the "first offense".

10 D. For purposes of this section, and except as otherwise
11 provided in subsection E of this section, "inducement" means
12 directly or indirectly offering, selling, trading, giving or
13 furnishing any discount, free goods, electronic or nonelectronic
14 refrigerated equipment, barrels, tubs, fixtures, dispensing
15 equipment, outdoor electric or nonelectric advertising structure
16 displaying the retailer's name, permanent shelving, supplies, gifts,
17 prizes, instantly redeemable coupons, premiums, retailer rebates,
18 services of any employee including but not limited to affixing price
19 labels or tags, routinely stocking product on shelves other than the
20 stocking of cold boxes, paying a third party for entering product
21 and price information into a retailer's computer system, portal,
22 website, spreadsheet or third-party system, handling product that
23 was not sold to the retailer by the licensee, paying a slotting fee,
24 selling on consignment, operating a retailer's cash register,

1 conducting janitorial services, providing ~~decoration~~ decorations,
2 samples of alcoholic beverages, personal property or other
3 inducement or thing of value to any retail spirit, retail beer,
4 retail wine, beer and wine, mixed beverage, caterer, bottle club or
5 special event licensee, wine and spirits wholesaler or beer
6 distributor, their agents or employees.

7 E. It shall not be deemed an inducement for a brewer, beer
8 distributor, small brewer self-distributor or brewpub self-
9 distributor to voluntarily take the following merchandising actions
10 with the permission of the retail licensee:

11 1. Furnish point-of-sale advertising materials and consumer
12 advertising specialties, as those terms are defined in 27 C.F.R.,
13 Section 6.84 and in compliance with the other limits and
14 restrictions provided in 27 C.F.R., Section 6.84;

15 2. Give or sell product displays, including but not limited to
16 barrels and tubs, provided that the value of such displays does not
17 exceed the limits and restrictions provided in 27 C.F.R., Section
18 6.83;

19 3. Build product displays, accessible to the customer and
20 without disturbing competitors' products, for the product being
21 delivered by the beer distributor;

22 4. Affix pricing to the shelf strip or product display for the
23 product being delivered by the beer distributor, small brewer self-
24 distributor or brewpub self-distributor, or brewed by the brewer;

1 5. Routinely stock and restock shelves and cold boxes and
2 rotate product that has been sold to the retail licensee by the beer
3 distributor, small brewer self-distributor or brewpub self-
4 distributor, or brewed by the brewer;

5 6. Furnish things of value to a temporary retailer, as defined
6 in 27 C.F.R., Section 6.85;

7 7. Sell equipment or supplies to a retail licensee, provided
8 the equipment or supplies are sold at a price not less than the cost
9 to the industry member and payment is collected within thirty (30)
10 days of the sale;

11 8. Install dispensing accessories at the retail location, as
12 long as the retailer bears the cost of installation including
13 equipment; or furnish, give or sell coil cleaning services to a
14 retailer;

15 9. Withdraw quantities of beer or cider in undamaged, original
16 packaging from the retail licensee's stock, provided the beer
17 distributor, small brewer self-distributor, brewpub self-distributor
18 or brewer sold such beer, directly or indirectly, to the retail
19 licensee and such removal is otherwise permitted under Section 3-115
20 of this title; provided, however, replacing with beer or cider of
21 equivalent value shall not be considered a consignment sale;

22 10. Provide mail-in rebates for beer, cider and nonalcoholic
23 beverage merchandise items, funded by the brewer and redeemed by the
24 brewer, either by itself or through a third-party fulfillment

1 company, for a discount or rebate on the beer, cider or nonalcoholic
2 item;

3 11. Provide a recommended shelf plan or shelf schematic to a
4 retail licensee for all or any portion of the inventory sold by the
5 retail licensee;

6 12. Furnish or give a sample of beer or cider to a retailer who
7 has not purchased the brand from that brewer, beer distributor,
8 small brewer self-distributor or brewpub self-distributor within the
9 last twelve (12) months, provided that the brewer, beer distributor,
10 small brewer self-distributor or brewpub self-distributor may not
11 give more than thirty-six (36) ounces of any brand of beer or cider
12 to a specific retailer;

13 13. Furnish or give newspaper cuts, mats or engraved blocks for
14 use in retailers' advertisements;

15 14. Package and distribute beer or cider in combination with
16 other nonalcoholic items for sale to consumers;

17 15. Give or sponsor educational seminars for employees of
18 retailers either at the brewer, beer distributor, small brewer self-
19 distributor or brewpub self-distributor's premises or at the
20 retailer's establishment, including seminars dealing with use of a
21 retailer's equipment, training seminars for employees of retailers
22 or tours of the brewer, beer distributor, small brewer self-
23 distributor, or brewpub self-distributor's plant premises, provided
24 that the brewer, beer distributor, small brewer self-distributor or

1 brewpub self-distributor shall not pay the retailer for the
2 employees' travel, lodging or other expenses in conjunction with an
3 educational seminar but may provide nominal hospitality during the
4 event;

5 16. Conduct tasting or sampling activities at a retail
6 establishment and purchase the products to be used from the retailer
7 so long as the purchase price paid does not exceed the ordinary
8 retail price; provided, a beer distributor shall not be required to
9 provide labor for such sampling activities;

10 17. Offer contest prizes, premium offers, refunds and like
11 items directly to consumers so long as officers, employees and
12 representatives of brewers, beer distributors, small brewer self-
13 distributors, brewpub self-distributors and licensed retailers are
14 excluded from participation;

15 18. List the names and addresses of two or more unaffiliated
16 retailers selling the products of a brewer, beer distributor, small
17 brewer, small brewer self-distributor or brewpub self-distributor in
18 an advertisement of such brewer, beer distributor, small brewer,
19 small brewer self-distributor or brewpub self-distributor so long as
20 the requirements of 27 C.F.R., Section 6.98 are satisfied,
21 considering applicable guidance issued by the United States
22 Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau;
23 provided, nothing in the Oklahoma Alcoholic Beverage Control Act
24 shall prohibit a retail, mixed beverage, on-premises beer and wine,

1 public event, special event, charitable auction, charitable
2 alcoholic beverage event, or complimentary beverage licensee from
3 communicating with a brewer, beer distributor, small brewer, small
4 brewer self-distributor or brewpub self-distributor on social media
5 or sharing media on the social media page or site of a brewer, beer
6 distributor, small brewer, small brewer self-distributor or brewpub
7 self-distributor. A retail, mixed beverage, on-premises beer and
8 wine, public event, special event, charitable auction, charitable
9 alcoholic beverage event, or complimentary beverage licensee may
10 request free social media advertising from a brewer, beer
11 distributor, small brewer, small brewer self-distributor or brewpub
12 self-distributor; provided, nothing in this section shall prohibit a
13 brewer, beer distributor, small brewer, small brewer self-
14 distributor or brewpub self-distributor from sharing, reposting or
15 forwarding a social media post by a retail, mixed beverage, on-
16 premises beer and wine, public event, special event, charitable
17 auction, charitable alcoholic beverage event, or complimentary
18 beverage licensee, as long as the sharing, reposting or forwarding
19 of the social media post does not contain the retail price of any
20 alcoholic beverage. No brewer, beer distributor, small brewer,
21 small brewer self-distributor or brewpub self-distributor shall pay
22 or reimburse a retail, mixed beverage, on-premises beer and wine,
23 public event, special event, charitable auction, charitable
24 alcoholic beverage event, or complimentary beverage licensee,

1 directly or indirectly, for any social media advertising services.
2 No retail, mixed beverage, on-premises beer and wine, public event,
3 special event, charitable auction, charitable alcoholic beverage
4 event, or complimentary beverage licensee shall accept any payment
5 or reimbursement, directly or indirectly, for any social media
6 advertising service offered by a brewer, beer distributor, small
7 brewer, small brewer self-distributor or brewpub self-distributor.
8 For purposes of this paragraph, "social media" means a service,
9 platform or site where users communicate with one another and share
10 media, such as pictures, videos, music and blogs, with other users
11 free of charge; or

12 19. Entering product and price information into a retailer's
13 portal, website, spreadsheet or third-party system. A brewer may
14 pay for a third-party system that provides data and pricing services
15 to the brewer or a beer distributor.

16 F. It shall not be deemed an inducement for a brewer, beer
17 distributor, small brewer self-distributor or brewpub self-
18 distributor to engage in the following marketing activities,
19 provided that the brewer, beer distributor, small brewer self-
20 distributor or brewpub self-distributor shall not pay the retailer's
21 travel costs other than those for local transportation or lodging:

22 1. Provide tickets to a retailer for a sporting or
23 entertainment event so long as a representative of the brewer, beer
24

1 distributor, small brewer self-distributor or brewpub self-
2 distributor attends the event with the retailer;

3 2. Provide food and beverage to a retailer for immediate
4 consumption:

5 a. at a meeting at which the primary purpose is the
6 discussion of business,

7 b. at a convention when the food and beverages are
8 offered to all participants, or

9 c. at a sports or entertainment event that the
10 representatives of a brewer, beer distributor, small
11 brewer self-distributor or brewpub self-distributor
12 attend with the retailer;

13 3. Participate in retailer association activities by engaging
14 in the following actions:

15 a. displaying products at a convention or trade show,

16 b. renting display booth space if the rental fee is the
17 same as paid by all exhibitors at the event,

18 c. providing its own hospitality which is independent
19 from association-sponsored activities,

20 d. purchasing tickets to functions and paying
21 registration fees if the payments or fees are the same
22 as paid by all attendees, participants or exhibitors
23 at the event, or

24

1 e. making payments for advertisements in programs or
2 brochures issued by retailer associations at a
3 convention or trade show; or

4 4. Giving or selling outdoor signs to a retailer so long as the
5 following requirements of 27 C.F.R., Section 6.102 are satisfied:

6 a. the sign bears conspicuous and substantial advertising
7 matter about the product or the brewer, beer
8 distributor, small brewer self-distributor or brewpub
9 self-distributor which is permanently inscribed or
10 securely affixed,

11 b. the retailer is not compensated, directly or
12 indirectly, such as through a sign company, for
13 displaying the signs, and

14 c. a permanent outdoor sign does not contain the
15 retailer's name.

16 G. It shall not be deemed an inducement or a discriminatory
17 action for a brewer, beer distributor, small brewer self-
18 distributor, or brewpub self-distributor to establish individualized
19 servicing and delivery schedules for its retailers based on each
20 retailer's actual needs, including, without limitation, on the basis
21 of the retailer's sales volume.

22 SECTION 4. AMENDATORY 37A O.S. 2021, Section 5-132, is
23 amended to read as follows:

1 Section 5-132. A. Except as provided in subsection D of this
2 section, no alcoholic beverage shall be labeled, offered or
3 advertised for sale in this state unless in accordance with rules
4 promulgated pursuant to the provisions of Section 5-130 of this
5 title and unless the brand label shall have been registered with and
6 approved by the ABLE Commission and the appropriate fee paid as
7 provided for in this section.

8 B. An application for registration of a brand label shall be
9 filed by and fees paid by the manufacturer or brewer, winemaker,
10 distiller or nonresident seller of the brand ~~if the manufacturer or~~
11 ~~brewer is licensed by the ABLE Commission; however, if the brewer or~~
12 ~~manufacturer is represented by a manufacturer's agent, licensed~~
13 ~~nonresident seller, wine and spirits wholesaler or beer distributor,~~
14 ~~then the manufacturer's agent, nonresident seller, wine and spirits~~
15 ~~wholesaler or beer distributor may submit each label for each~~
16 ~~product the manufacturer or brewer offers for sale in this state,~~
17 ~~along with payment of the brand registration fee, on behalf of the~~
18 ~~manufacturer or brewer; provided, the manufacturer or brewer must~~
19 ~~fully reimburse the manufacturer's agent, licensed nonresident~~
20 ~~seller, wine and spirits wholesaler or beer distributor for the cost~~
21 ~~of the brand registration fee within forty-five (45) days of the~~
22 ~~time the original brand registration fee is paid.~~ Licensees, other
23 than the foregoing applicants, shall not be required to verify
24 registration to the ABLE Commission and shall not be penalized for

1 any applicant's failure to register its brand label in accordance
2 with this section. Cordials and wines which differ only as to age
3 or vintage year, as defined by such rules, shall be considered the
4 same brand, and those that differ as to type or class may be
5 considered the same brand by the ABLE Commission where consistent
6 with the purposes of this section.

7 C. The application for registration of a brand label shall be
8 filed on a form prescribed by the ABLE Commission, and shall contain
9 such information as the ABLE Commission shall require. Such
10 application shall be accompanied by a certified check, bank
11 officers' check or draft or money order in the amount of the annual
12 registration fee, or the properly prorated portion thereof
13 prescribed by this section.

14 D. 1. The annual fee for registration of any brand label for
15 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
16 annual fee for registration of any brand label for beer shall be Two
17 Hundred Dollars (\$200.00). The annual fee for registration of any
18 brand label for wine made in the United States, or for registration
19 of any category of imported wine as defined by the Tax Commission,
20 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
21 state shall be exempt from brand label registration fees.

22 2. Each brand label registered and approved pursuant to this
23 section shall be valid for a term of up to one (1) year, expiring on
24 the June 30 next following registration, and may be renewed for

1 subsequent terms of one (1) year beginning on the July 1 following
2 the initial registration. Brand registration fees for labels
3 registered after July 1 may be prorated through the following June
4 30 on a quarterly basis. The brand registration fee shall not be
5 transferable, unless otherwise allowed by law. A nonresident seller
6 who registered brands prior to May 7, 2019, may transfer brand
7 registrations to the brewer or manufacturer that produces those
8 brands, provided the brewer or manufacturer has obtained a license,
9 at no expense to the nonresident seller, brewer or manufacturer.

10 E. If the ABLE Commission shall deny the application for
11 registration of a brand label, it shall return the registration fee
12 to the applicant, less twenty-five percent (25%) of such fee.

13 F. The ABLE Commission may at any time exempt any discontinued
14 brand from fee provisions of this section where a manufacturer,
15 brewer, beer distributor or wholesaler has an inventory of one
16 hundred cases or less of liquor or wine and five hundred cases or
17 less of beer, and certifies to the ABLE Commission in writing that
18 such brand is being discontinued.

19 G. No private labels or control labels shall be approved for
20 sale in this state~~er~~, except for charity collaboration beer as
21 authorized in Section ~~3 of this act~~ 2-102.1 of this title.

22 SECTION 5. This act shall become effective November 1, 2023.

23

24 59-1-7543 JL 02/16/23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24