

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2843

By: Caldwell (Trey)

6 COMMITTEE SUBSTITUTE

7 An Act relating to alcoholic beverages; amending 37A
8 O.S. 2021, Sections 2-108, 3-109, 3-123 and 5-132,
9 which relate to alcoholic beverages; providing that a
10 beer distributor licensee may store alcoholic
11 beverages of any kind, nonalcoholic beverages, and
12 other goods, wares, and merchandise in any warehouses
13 owned or leased by the beer distributor; providing
14 that a beer distributor is not obligated to segregate
15 the products in the warehouse; providing that a
16 leased warehouse includes a leased space within a
17 multi-tenant building under certain circumstances;
18 providing that employees of a beer distributor may
19 transport beer to licensed retailers; modifying
20 penalties and providing a remedy to cure such
21 violations; providing it shall not be deemed an
22 inducement or a discriminatory action for certain
23 license holders to establish individualized servicing
24 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
declaring an emergency.

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

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

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

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

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

10 3. To purchase beer and cider from licensed beer distributors
11 in this state;

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

19 5. To sell beer and cider in this state to beer distributors
20 and out of this state to qualified persons, including federal
21 instrumentalities and voluntary associations of military personnel
22 on federal enclaves in this state over which this state has ceded
23 jurisdiction;

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

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

12 8. To store alcoholic beverages of any kind, including wine and
13 spirits owned by a licensed affiliated entity having common
14 ownership, nonalcoholic beverages, and other goods, wares, and
15 merchandise related to the foregoing, in any number of warehouses
16 owned or leased by the beer distributor as determined by the beer
17 distributor. Provided, however, the storage of wine and spirits
18 shall comply with the limitations to the number of warehouses
19 contained in Section 2-107 of this title. There shall be no
20 obligation to segregate the products in the warehouse by alcohol
21 content or type of product. For purposes of this section, a leased
22 warehouse includes a leased space within a multi-tenant building as
23 long as such leased space is a discrete, enclosed area operated and
24 controlled exclusively by the beer distributor.

1 B. In the event that no in-state beer distributor for a
2 particular brewer or manufacturer is willing to deliver beer or
3 cider to a county or counties located within the state, the ABLE
4 Commission may grant an economic hardship exemption to an out-of-
5 state beer distributor for a particular brewer and waive the at-rest
6 requirement set forth in this section, upon a good-faith showing
7 that:

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

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

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

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

1 responsibility to distribute beer in the subject territory shall
2 compensate the out-of-state distributor the fair market value of the
3 distribution rights of the territory as determined pursuant to
4 Section 3-108 of this title.

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

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

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

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

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

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1 1. To discriminate, directly or indirectly, in price between
2 one wine and spirits wholesaler and another wine and spirits
3 wholesaler, when that manufacturer has not designated a single wine
4 and spirits wholesaler, or between one retailer and another retailer
5 purchasing alcoholic beverages bearing the same brand or trade name
6 and of like age and quality, unless otherwise provided by law; or

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

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

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

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

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

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

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

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

1 was not sold to the retailer by the licensee, paying a slotting fee,
2 selling on consignment, operating a retailer's cash register,
3 conducting janitorial services, ~~decoration~~ providing decorations,
4 samples of alcoholic beverages, personal property or other
5 inducement or thing of value to any retail spirit, retail beer,
6 retail wine, beer and wine, mixed beverage, caterer, bottle club or
7 special event licensee, wine and spirits wholesaler or beer
8 distributor, their agents or employees.

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

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

17 2. Give or sell product displays, including but not limited to
18 barrels and tubs, provided that the value of such displays does not
19 exceed the limits and restrictions provided in 27 C.F.R., Section
20 6.83;

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

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

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

8 6. Periodically perform product resets, with permission of the
9 retail licensee, pursuant to a provided shelf plan or shelf
10 schematic;

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

13 ~~7.~~ 8. Sell equipment or supplies to a retail licensee, provided
14 the equipment or supplies are sold at a price not less than the cost
15 to the industry member and payment is collected within thirty (30)
16 days of the sale;

17 ~~8.~~ 9. Install dispensing accessories at the retail location, as
18 long as the retailer bears the cost of installation including
19 equipment; or furnish, give or sell coil cleaning services to a
20 retailer;

21 ~~9.~~ 10. Withdraw quantities of beer or cider in undamaged,
22 original packaging from the retail licensee's stock, provided the
23 beer distributor, small brewer self-distributor, brewpub self-
24 distributor or brewer sold such beer, directly or indirectly, to the

1 retail licensee and such removal is otherwise permitted under
2 Section 3-115 of this title; provided, however, replacing with beer
3 or cider of equivalent value shall not be considered a consignment
4 sale;

5 ~~10.~~ 11. Provide mail-in rebates for beer, cider and
6 nonalcoholic beverage merchandise items, funded by the brewer and
7 redeemed by the brewer, either by itself or through a third-party
8 fulfillment company, for a discount or rebate on the beer, cider or
9 nonalcoholic item;

10 ~~11.~~ 12. Provide a recommended shelf plan or shelf schematic to
11 a retail licensee for all or any portion of the inventory sold by
12 the retail licensee;

13 ~~12.~~ 13. Furnish or give a sample of beer or cider to a retailer
14 who has not purchased the brand from that brewer, beer distributor,
15 small brewer self-distributor or brewpub self-distributor within the
16 last twelve (12) months, provided that the brewer, beer distributor,
17 small brewer self-distributor or brewpub self-distributor may not
18 give more than thirty-six (36) ounces of any brand of beer or cider
19 to a specific retailer;

20 ~~13.~~ 14. Furnish or give newspaper cuts, mats or engraved blocks
21 for use in retailers' advertisements;

22 ~~14.~~ 15. Package and distribute beer or cider in combination
23 with other nonalcoholic items for sale to consumers;

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1 ~~15.~~ 16. Give or sponsor educational seminars for employees of
2 retailers either at the brewer, beer distributor, small brewer self-
3 distributor or brewpub self-distributor's premises or at the
4 retailer's establishment, including seminars dealing with use of a
5 retailer's equipment, training seminars for employees of retailers
6 or tours of the brewer, beer distributor, small brewer self-
7 distributor, or brewpub self-distributor's plant premises, provided
8 that the brewer, beer distributor, small brewer self-distributor or
9 brewpub self-distributor shall not pay the retailer for the
10 employees' travel, lodging or other expenses in conjunction with an
11 educational seminar but may provide nominal hospitality during the
12 event;

13 ~~16.~~ 17. Conduct tasting or sampling activities at a retail
14 establishment and purchase the products to be used from the retailer
15 so long as the purchase price paid does not exceed the ordinary
16 retail price; provided, a beer distributor shall not be required to
17 provide labor for such sampling activities;

18 ~~17.~~ 18. Offer contest prizes, premium offers, refunds and like
19 items directly to consumers so long as officers, employees and
20 representatives of brewers, beer distributors, small brewer self-
21 distributors, brewpub self-distributors and licensed retailers are
22 excluded from participation;

23 ~~18.~~ 19. List the names and addresses of two or more
24 unaffiliated retailers selling the products of a brewer, beer

1 distributor, small brewer, small brewer self-distributor or brewpub
2 self-distributor in an advertisement of such brewer, beer
3 distributor, small brewer, small brewer self-distributor or brewpub
4 self-distributor so long as the requirements of 27 C.F.R., Section
5 6.98 are satisfied, considering applicable guidance issued by the
6 United States Department of the Treasury Alcohol and Tobacco Tax and
7 Trade Bureau; provided, nothing in the Oklahoma Alcoholic Beverage
8 Control Act shall prohibit a retail, mixed beverage, on-premises
9 beer and wine, public event, special event, charitable auction,
10 charitable alcoholic beverage event, or complimentary beverage
11 licensee from communicating with a brewer, beer distributor, small
12 brewer, small brewer self-distributor or brewpub self-distributor on
13 social media or sharing media on the social media page or site of a
14 brewer, beer distributor, small brewer, small brewer self-
15 distributor or brewpub self-distributor. A retail, mixed beverage,
16 on-premises beer and wine, public event, special event, charitable
17 auction, charitable alcoholic beverage event, or complimentary
18 beverage licensee may request free social media advertising from a
19 brewer, beer distributor, small brewer, small brewer self-
20 distributor or brewpub self-distributor; provided, nothing in this
21 section shall prohibit a brewer, beer distributor, small brewer,
22 small brewer self-distributor or brewpub self-distributor from
23 sharing, reposting or forwarding a social media post by a retail,
24 mixed beverage, on-premises beer and wine, public event, special

1 event, charitable auction, charitable alcoholic beverage event, or
2 complimentary beverage licensee, as long as the sharing, reposting
3 or forwarding of the social media post does not contain the retail
4 price of any alcoholic beverage. No brewer, beer distributor, small
5 brewer, small brewer self-distributor or brewpub self-distributor
6 shall pay or reimburse a retail, mixed beverage, on-premises beer
7 and wine, public event, special event, charitable auction,
8 charitable alcoholic beverage event, or complimentary beverage
9 licensee, directly or indirectly, for any social media advertising
10 services. No retail, mixed beverage, on-premises beer and wine,
11 public event, special event, charitable auction, charitable
12 alcoholic beverage event, or complimentary beverage licensee shall
13 accept any payment or reimbursement, directly or indirectly, for any
14 social media advertising service offered by a brewer, beer
15 distributor, small brewer, small brewer self-distributor or brewpub
16 self-distributor. For purposes of this paragraph, "social media"
17 means a service, platform or site where users communicate with one
18 another and share media, such as pictures, videos, music and blogs,
19 with other users free of charge; or

20 ~~19.~~ 20. Entering product and price information into a
21 retailer's portal, website, spreadsheet or third-party system. A
22 brewer may pay for a third-party system that provides data and
23 pricing services to the brewer or a beer distributor.

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1 F. It shall not be deemed an inducement for a brewer, beer
2 distributor, small brewer self-distributor or brewpub self-
3 distributor to engage in the following marketing activities,
4 provided that the brewer, beer distributor, small brewer self-
5 distributor or brewpub self-distributor shall not pay the retailer's
6 travel costs other than those for local transportation or lodging:

7 1. Provide tickets to a retailer for a sporting or
8 entertainment event so long as a representative of the brewer, beer
9 distributor, small brewer self-distributor or brewpub self-
10 distributor attends the event with the retailer;

11 2. Provide food and beverage to a retailer for immediate
12 consumption:

13 a. at a meeting at which the primary purpose is the
14 discussion of business,

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

17 c. at a sports or entertainment event that the
18 representatives of a brewer, beer distributor, small
19 brewer self-distributor or brewpub self-distributor
20 attend with the retailer;

21 3. Participate in retailer association activities by engaging
22 in the following actions:

23 a. displaying products at a convention or trade show,
24

- b. renting display booth space if the rental fee is the same as paid by all exhibitors at the event,
- c. providing its own hospitality which is independent from association-sponsored activities,
- d. purchasing tickets to functions and paying registration fees if the payments or fees are the same as paid by all attendees, participants or exhibitors at the event, or
- e. making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show; or

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

- a. the sign bears conspicuous and substantial advertising matter about the product or the brewer, beer distributor, small brewer self-distributor or brewpub self-distributor which is permanently inscribed or securely affixed,
- b. the retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs, and
- c. a permanent outdoor sign does not contain the retailer's name.

1 G. It shall not be deemed an inducement or a discriminatory
2 action for a brewer, beer distributor, small brewer self-
3 distributor, brewpub self-distributor, or a wine and spirits
4 wholesaler to establish individualized servicing and delivery
5 schedules for its retailers based on each retailer's actual needs,
6 including, without limitation, on the basis of the retailer's sales
7 volume.

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

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

17 B. An application for registration of a brand label shall be
18 filed by and fees paid by the manufacturer or brewer, winemaker,
19 distiller or nonresident seller of the brand ~~if the manufacturer or~~
20 ~~brewer is licensed by the ABLE Commission; however, if the brewer or~~
21 ~~manufacturer is represented by a manufacturer's agent, licensed~~
22 ~~nonresident seller, wine and spirits wholesaler or beer distributor,~~
23 ~~then the manufacturer's agent, nonresident seller, wine and spirits~~
24 ~~wholesaler or beer distributor may submit each label for each~~

1 ~~product the manufacturer or brewer offers for sale in this state,~~
2 ~~along with payment of the brand registration fee, on behalf of the~~
3 ~~manufacturer or brewer; provided, the manufacturer or brewer must~~
4 ~~fully reimburse the manufacturer's agent, licensed nonresident~~
5 ~~seller, wine and spirits wholesaler or beer distributor for the cost~~
6 ~~of the brand registration fee within forty five (45) days of the~~
7 ~~time the original brand registration fee is paid.~~ Licensees, other
8 than the foregoing applicants, shall not be required to verify
9 registration to the ABLE Commission and shall not be penalized for
10 any applicant's failure to register its brand label in accordance
11 with this section. Cordials and wines which differ only as to age
12 or vintage year, as defined by such rules, shall be considered the
13 same brand, and those that differ as to type or class may be
14 considered the same brand by the ABLE Commission where consistent
15 with the purposes of this section.

16 C. The application for registration of a brand label shall be
17 filed on a form prescribed by the ABLE Commission, and shall contain
18 such information as the ABLE Commission shall require. Such
19 application shall be accompanied by a certified check, bank
20 officers' check or draft or money order in the amount of the annual
21 registration fee, or the properly prorated portion thereof
22 prescribed by this section.

23 D. 1. The annual fee for registration of any brand label for
24 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The

1 annual fee for registration of any brand label for beer shall be Two
2 Hundred Dollars (\$200.00). The annual fee for registration of any
3 brand label for wine made in the United States, or for registration
4 of any category of imported wine as defined by the Tax Commission,
5 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
6 state shall be exempt from brand label registration fees.

7 2. Each brand label registered and approved pursuant to this
8 section shall be valid for a term of up to one (1) year, expiring on
9 the June 30 next following registration, and may be renewed for
10 subsequent terms of one (1) year beginning on the July 1 following
11 the initial registration. Brand registration fees for labels
12 registered after July 1 may be prorated through the following June
13 30 on a quarterly basis. The brand registration fee shall not be
14 transferable, unless otherwise allowed by law. A nonresident seller
15 who registered brands prior to May 7, 2019, may transfer brand
16 registrations to the brewer or manufacturer that produces those
17 brands, provided the brewer or manufacturer has obtained a license,
18 at no expense to the nonresident seller, brewer or manufacturer.

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

22 F. The ABLE Commission may at any time exempt any discontinued
23 brand from fee provisions of this section where a manufacturer,
24 brewer, beer distributor or wholesaler has an inventory of one

1 hundred cases or less of liquor or wine and five hundred cases or
2 less of beer, and certifies to the ABLE Commission in writing that
3 such brand is being discontinued.

4 G. No private labels or control labels shall be approved for
5 sale in this state~~r,~~ except for charity collaboration beer as
6 authorized in Section ~~3~~2-102.1 of this ~~act~~ title.

7 SECTION 5. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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