

1 ENGROSSED HOUSE  
2 BILL NO. 2843

By: Caldwell (Trey) of the  
House

3 and

4 Seifried of the Senate  
5

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

24



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, ~~except~~ 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.

11 Passed the House of Representatives the 21st day of March, 2023.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2023.

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Presiding Officer of the Senate

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