

1 **SENATE FLOOR VERSION**

2 April 3, 2023

3 ENGROSSED HOUSE
4 BILL NO. 2843

By: Caldwell (Trey) of the
House

5 and

6 Seifried of the Senate

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

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

1 long as such leased space is a discrete, enclosed area operated and
2 controlled exclusively by the beer distributor.

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

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

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

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

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

1 (60) days prior to the renewal date of the exemption. The in-state
2 beer distributor who has executed a distribution agreement to assume
3 responsibility to distribute beer in the subject territory shall
4 compensate the out-of-state distributor the fair market value of the
5 distribution rights of the territory as determined pursuant to
6 Section 3-108 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 stocking of cold boxes, paying a third party for entering product
2 and price information into a retailer's computer system, portal,
3 website, spreadsheet or third-party system, handling product that
4 was not sold to the retailer by the licensee, paying a slotting fee,
5 selling on consignment, operating a retailer's cash register,
6 conducting janitorial services, ~~decoration~~ providing decorations,
7 samples of alcoholic beverages, personal property or other
8 inducement or thing of value to any retail spirit, retail beer,
9 retail wine, beer and wine, mixed beverage, caterer, bottle club or
10 special event licensee, wine and spirits wholesaler or beer
11 distributor, their agents or employees.

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

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

20 2. Give or sell product displays, including but not limited to
21 barrels and tubs, provided that the value of such displays does not
22 exceed the limits and restrictions provided in 27 C.F.R., Section
23 6.83;

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

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

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

11 6. Periodically perform product resets, with permission of the
12 retail licensee, pursuant to a provided shelf plan or shelf
13 schematic;

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

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

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

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1 ~~9.~~ 10. Withdraw quantities of beer or cider in undamaged,
2 original packaging from the retail licensee's stock, provided the
3 beer distributor, small brewer self-distributor, brewpub self-
4 distributor or brewer sold such beer, directly or indirectly, to the
5 retail licensee and such removal is otherwise permitted under
6 Section 3-115 of this title; provided, however, replacing with beer
7 or cider of equivalent value shall not be considered a consignment
8 sale;

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

14 ~~11.~~ 12. Provide a recommended shelf plan or shelf schematic to
15 a retail licensee for all or any portion of the inventory sold by
16 the retail licensee;

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

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1 ~~13.~~ 14. Furnish or give newspaper cuts, mats or engraved blocks
2 for use in retailers' advertisements;

3 ~~14.~~ 15. Package and distribute beer or cider in combination
4 with other nonalcoholic items for sale to consumers;

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

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

22 ~~17.~~ 18. Offer contest prizes, premium offers, refunds and like
23 items directly to consumers so long as officers, employees and
24 representatives of brewers, beer distributors, small brewer self-

1 distributors, brewpub self-distributors and licensed retailers are
2 excluded from participation;

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

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

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1 ~~19.~~ 20. Entering product and price information into a
2 retailer's portal, website, spreadsheet or third-party system. A
3 brewer may pay for a third-party system that provides data and
4 pricing services to the brewer or a beer distributor.

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

11 1. Provide tickets to a retailer for a sporting or
12 entertainment event so long as a representative of the brewer, beer
13 distributor, small brewer self-distributor or brewpub self-
14 distributor attends the event with the retailer;

15 2. Provide food and beverage to a retailer for immediate
16 consumption:

17 a. at a meeting at which the primary purpose is the
18 discussion of business,

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

21 c. at a sports or entertainment event that the
22 representatives of a brewer, beer distributor, small
23 brewer self-distributor or brewpub self-distributor
24 attend with the retailer;

1 3. Participate in retailer association activities by engaging
2 in the following actions:

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

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

- 17 a. the sign bears conspicuous and substantial advertising
18 matter about the product or the brewer, beer
19 distributor, small brewer self-distributor or brewpub
20 self-distributor which is permanently inscribed or
21 securely affixed,
- 22 b. the retailer is not compensated, directly or
23 indirectly, such as through a sign company, for
24 displaying the signs, and

1 c. a permanent outdoor sign does not contain the
2 retailer's name.

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

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

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

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

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

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

1 D. 1. The annual fee for registration of any brand label for
2 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
3 annual fee for registration of any brand label for beer shall be Two
4 Hundred Dollars (\$200.00). The annual fee for registration of any
5 brand label for wine made in the United States, or for registration
6 of any category of imported wine as defined by the Tax Commission,
7 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
8 state shall be exempt from brand label registration fees.

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

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

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1 F. The ABLE Commission may at any time exempt any discontinued
2 brand from fee provisions of this section where a manufacturer,
3 brewer, beer distributor or wholesaler has an inventory of one
4 hundred cases or less of liquor or wine and five hundred cases or
5 less of beer, and certifies to the ABLE Commission in writing that
6 such brand is being discontinued.

7 G. No private labels or control labels shall be approved for
8 sale in this state, ~~and~~ except for charity collaboration beer as
9 authorized in Section ~~3~~ 2-102.1 of this ~~act~~ title.

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

14 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
15 April 3, 2023 - DO PASS
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