An Act

ENROLLED HOUSE
BILL NO. 2843

By: Caldwell (Trey) of the House

and

Seifried of the Senate

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Sections 2-108, 3-109, 3-123 and 5-132, which relate to alcoholic beverages; providing that a beer distributor licensee may store alcoholic beverages of any kind, nonalcoholic beverages, and other goods, wares, and merchandise in any warehouses owned or leased by the beer distributor; providing that a beer distributor is not obligated to segregate the products in the warehouse; providing that a leased warehouse includes a leased space within a multi-tenant building under certain circumstances; providing that employees of a beer distributor may 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.

SUBJECT: Alcoholic beverages

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:

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

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

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

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

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

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

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

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

8. To store alcoholic beverages of any kind, including wine and spirits owned by a licensed affiliated entity having common ownership, nonalcoholic beverages, and other goods, wares, and

merchandise related to the foregoing, in any number of warehouses owned or leased by the beer distributor as determined by the beer distributor. Provided, however, the storage of wine and spirits shall comply with the limitations to the number of warehouses contained in Section 2-107 of this title. There shall be no obligation to segregate the products in the warehouse by alcohol content or type of product. For purposes of this section, a leased warehouse includes a leased space within a multi-tenant building as long as such leased space is a discrete, enclosed area operated and controlled exclusively by the beer distributor.

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

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

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

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

C. The economic hardship exemption provided for in subsection B of this section shall renew annually, provided that no in-state beer distributor for a particular brewer or manufacturer submits an executed distribution agreement to assume responsibility to distribute the beer in the subject county or counties at least sixty (60) days prior to the renewal date of the exemption. The in-state beer distributor who has executed a distribution agreement to assume responsibility to distribute beer in the subject territory shall compensate the out-of-state distributor the fair market value of the distribution rights of the territory as determined pursuant to Section 3-108 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. For purposes of this section, and except as otherwise provided in subsection E of this section, "inducement" means directly or indirectly offering, selling, trading, giving or furnishing any discount, free goods, electronic or nonelectronic refrigerated equipment, barrels, tubs, fixtures, dispensing equipment, outdoor electric or nonelectric advertising structure displaying the retailer's name, permanent shelving, supplies, gifts, prizes, instantly redeemable coupons, premiums, retailer rebates, services of any employee including but not limited to affixing price labels or tags, routinely stocking product on shelves other than the stocking of cold boxes, paying a third party for entering product and price information into a retailer's computer system, portal, website, spreadsheet or third-party system, handling product that was not sold to the retailer by the licensee, paying a slotting fee, selling on consignment, operating a retailer's cash register, conducting janitorial services, ~~decoration~~ providing decorations, samples of alcoholic beverages, personal property or other inducement or thing of value to any retail spirit, retail beer, retail wine, beer and wine, mixed beverage, caterer, bottle club or special event licensee, wine and spirits wholesaler or beer distributor, their agents or employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~18.~~ 19. List the names and addresses of two or more unaffiliated retailers selling the products of a brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor in an advertisement of such brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor so long as the requirements of 27 C.F.R., Section 6.98 are satisfied, considering applicable guidance issued by the United States Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau; provided, nothing in the Oklahoma Alcoholic Beverage Control Act shall prohibit a retail, mixed beverage, on-premises beer and wine, public event, special event, charitable auction, charitable alcoholic beverage event, or complimentary beverage licensee from communicating with a brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor on social media or sharing media on the social media page or site of a brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor. A retail, mixed beverage, on-premises beer and wine, public event, special event, charitable auction, charitable alcoholic beverage event, or complimentary beverage licensee may request free social media advertising from a brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor; provided, nothing in this section shall prohibit a brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor from sharing, reposting or forwarding a social media post by a retail, mixed beverage, on-premises beer and wine, public event, special event, charitable auction, charitable alcoholic beverage event, or complimentary beverage licensee, as long as the sharing, reposting or forwarding of the social media post does not contain the retail price of any alcoholic beverage. No brewer, beer distributor, small brewer, small brewer self-distributor or brewpub self-distributor shall pay or reimburse a retail, mixed beverage, on-premises beer

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

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

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

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

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

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

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

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

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

a. displaying products at a convention or trade show,

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.

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

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

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

B. An application for registration of a brand label shall be filed by and fees paid by the manufacturer or brewer, winemaker, distiller or nonresident seller of the brand ~~if the manufacturer or brewer is licensed by the ABLE Commission; however, if the brewer or manufacturer is represented by a manufacturer's agent, licensed nonresident seller, wine and spirits wholesaler or beer distributor, then the manufacturer's agent, nonresident seller, wine and spirits wholesaler or beer distributor may submit each label for each product the manufacturer or brewer offers for sale in this state, along with payment of the brand registration fee, on behalf of the manufacturer or brewer; provided, the manufacturer or brewer must fully reimburse the manufacturer's agent, licensed nonresident seller, wine and spirits wholesaler or beer distributor for the cost of the brand registration fee within forty-five (45) days of the time the original brand registration fee is paid~~. Licensees, other than the foregoing applicants, shall not be required to verify registration to the ABLE Commission and shall not be penalized for any applicant's failure to register its brand label in accordance with this section. Cordials and wines which differ only as to age or vintage year, as defined by such rules, shall be considered the same brand, and those that differ as to type or class may be considered the same brand by the ABLE Commission where consistent with the purposes of this section.

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

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

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

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

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

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

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

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

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

Presiding Officer of the House
of Representatives

Passed the Senate the 19th day of April, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 20th

day of April, 20 23, at 3:15 o'clock p. M.

By: Summer Curry

Approved by the Governor of the State of Oklahoma this 26th

day of April, 20 23, at 1:41 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 26

day of April, 20 23, at 3:02 o'clock P M.

By: Brian Bingman