

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1315

By: McEntire of the House and Leewright of the Senate

Title: Alcoholic beverages; prohibited acts of certain licensees; modifying circumstances in which certain products may be replaced; record keeping; reduction retention period; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Leewright _____

Stanislowski _____

Bice _____

Pugh _____

Brooks _____

Young _____

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1315

By: McEntire of the House

and

Leewright and Bergstrom of
the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending Section 89, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-119), as last amended by Section 22 of Enrolled Senate Bill No. 906 of the 1st Session of the 57th Oklahoma Legislature, which relates to prohibited acts of certain licensees; modifying circumstances in which certain products may be replaced; expanding the period in which certain wine or spirits may be replaced; amending Section 93, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-123), which relates to sales of alcoholic beverages to wholesalers or retailers; modifying to whom certain sales of alcoholic beverages are prohibited; providing for exception to certain prohibition; defining certain term; providing exceptions to certain prohibitions for certain, enumerated acts; providing list of acts not considered inducements; amending Section 129, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 5-126), as last amended by Section 33 of Enrolled Senate Bill No. 906 of the 1st Session of the 57th Oklahoma Legislature, which relates to record keeping; authorizing certain audit period upon certain audit findings; providing certain exception to audit period upon certain audit findings;

1 prohibiting limited audit upon certain audit
2 findings; amending Section 148, Chapter 366, O.S.L.
3 2016, as amended by Section 3, Chapter 84, O.S.L.
4 2017 (37A O.S. Supp. 2018, Section 6-108), which
5 relates to retail wine and retail beer licensee
6 prohibitions; expanding certain exception to certain
7 prohibition; and declaring an emergency.

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

9 SECTION 1. AMENDATORY Section 89, Chapter 366, O.S.L.
10 2016 (37A O.S. Supp. 2018, Section 3-119), as last amended by
11 Section 22 of Enrolled Senate Bill No. 906 of the 1st Session of the
12 57th Oklahoma Legislature, is amended to read as follows:

13 Section 3-119. It shall be unlawful for any manufacturer,
14 brewer, wine and spirits wholesaler, beer distributor or person
15 authorized to sell alcoholic beverages to a wholesaler, or any
16 employee, officer, director, stockholder owning fifteen percent
17 (15%) or more of the stock, any type of partner, manager, member or
18 agent thereof, to directly or indirectly:

19 1. Have any financial interest in any premises upon which any
20 alcoholic beverage is sold at retail or in any business connected
21 with the retailing of alcoholic beverages; provided, nothing in this
22 act shall prohibit the operation of a mixed beverage licensee, beer
23 and wine licensee or caterer licensee by an entity which has common
24 owners with the holder of a small brewer license or a brewpub
license;

1 2. Lend any money or other thing of value, or to make any gift
2 or offer any gratuity, to any package store, retail wine, retail
3 beer, mixed beverage, beer and wine, public event or bottle club
4 licensee or caterer;

5 3. Guarantee any loan or the repayment of any financial
6 obligation of any retailer, mixed beverage, beer and wine, public
7 event or bottle club licensee or caterer;

8 4. Require any wine and spirits wholesaler, beer distributor,
9 retailer, mixed beverage, on-premises beer and wine licensee, public
10 event or caterer to purchase and dispose of any quota of alcoholic
11 beverages, or to require any retailer to purchase any kind, type,
12 size, container or brand of alcoholic beverages in order to obtain
13 any other kind, type, size, container or brand of alcoholic
14 beverages;

15 5. Sell to any retailer, mixed beverage, on-premises beer and
16 wine licensee, public event or caterer any alcoholic beverage on
17 consignment, or upon condition, or with the privilege of return, or
18 on any condition other than a bona fide sale; provided, the
19 following shall not be considered a violation of this paragraph:

20 a. delivery in good faith, through mistake, inadvertence
21 or oversight, of an alcoholic beverage that was not
22 ordered by a retailer, mixed beverage licensee, on-
23 premises beer and wine licensee, caterer, public event
24 or special event licensee to such licensee ~~shall not~~

1 ~~be considered a violation of this paragraph, nor~~
2 ~~shall,~~

3 b. replacement of product breakage that occurred while
4 the alcoholic beverages were in transit from the
5 wholesaler to the licensee, or

6 c. replacement of ~~product with torn or defective labels,~~
7 ~~short-filled cases or other defects~~ cork-tainted wine
8 that ~~make~~ makes the product unsaleable, as long as the
9 licensee notifies the wine and spirits wholesaler ~~or~~
10 ~~the beer distributor~~ of the error, ~~breakage or~~ defect
11 in writing within ~~five (5) business~~ ninety (90) days
12 after delivery of the product; or

13 6. Extend credit to any retailer, other than holders of Federal
14 Liquor Stamps on United States government reservations and
15 installations, mixed beverage, public event or on-premises beer and
16 wine licensee or caterer, other than a state lodge located in a
17 county which has approved the retail sale of alcoholic beverages by
18 the individual drink for on-premises consumption. The acceptance of
19 a postdated check or draft or the failure to deposit for collection
20 a current check or draft by the second banking day after receipt
21 shall be deemed an extension of credit. Violation of this section
22 shall be grounds for suspension of the license.

1 SECTION 2. AMENDATORY Section 93, Chapter 366,
2 O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-123), is amended
3 to read as follows:

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

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

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

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

1 C. For the violation of any provision of this section or of any
2 rule duly promulgated under this section, the ABLE Commission may
3 suspend or revoke a license as follows:

4 1. For a first offense, not exceeding ten (10) days' suspension
5 of license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 18. List the names and addresses of two or more unaffiliated
16 retailers selling the products of a brewer, beer distributor, small
17 brewer self-distributor or brewpub self-distributor in an
18 advertisement of such brewer, beer distributor, small brewer self-
19 distributor or brewpub self-distributor so long as the requirements
20 of 27 C.F.R., Section 6.98 are satisfied; or

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

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.

SECTION 3. AMENDATORY Section 129, Chapter 366, O.S.L.

2016 (37A O.S. Supp. 2018, Section 5-126), as last amended by Section 33 of Enrolled Senate Bill No. 906 of the 1st Session of the 57th Oklahoma Legislature, is amended to read as follows:

Section 5-126. A. Every manufacturer, brewer, wine and spirits wholesaler, beer distributor, nonresident seller, retailer, mixed beverage, caterer, public event and special event licensee shall keep a record of all alcoholic beverages imported, purchased, received, manufactured, produced, sold, delivered or otherwise disposed of, and the amount of all alcoholic beverages on hand, as herein provided. Such records must be kept for a period of at least three (3) years, as required by 27 C.F.R., Chapter 1, and shall include:

1. The date;

2. The number of the invoice, manifest, bill of lading or similar type document; and

3. The total amount of alcoholic beverages purchased, imported, received, manufactured, produced, sold, delivered or otherwise disposed of, by such licensee in each transaction.

Each such licensee shall keep and maintain such other records in ~~details~~ detail as the Oklahoma Tax Commission may require.

B. If a manufacturer, brewer, wine and spirits wholesaler, beer distributor, nonresident seller, retailer, mixed beverage, caterer, public event or special event licensee has been previously audited

1 by the Tax Commission with an audit finding that the licensee
2 correctly reported and kept sufficient records for audit purposes,
3 the next subsequent audit shall be limited to records kept for one
4 (1) year prior to the date of such audit; provided, however, if an
5 audit finding determines that the licensee incorrectly reported or
6 failed to keep sufficient records for audit purposes, then the audit
7 shall not be limited by the provisions of this subsection. If any
8 audit limited by the provisions of this subsection determines that
9 the licensee has incorrectly reported or failed to keep sufficient
10 records for audit purposes, then the licensee shall no longer be
11 eligible for limited audits.

12 SECTION 4. AMENDATORY Section 148, Chapter 366, O.S.L.
13 2016, as amended by Section 3, Chapter 84, O.S.L. 2017 (37A O.S.
14 Supp. 2018, Section 6-108), is amended to read as follows:

15 Section 6-108. No holder of a Retail Wine License or a Retail
16 Beer License shall:

17 1. Purchase or receive any alcoholic beverage other than from a
18 wine and spirits wholesaler, beer distributor, winery or small
19 brewer self-distribution licensee;

20 2. Suffer or permit any retail container to be opened, or any
21 alcoholic beverage to be consumed on the licensed premises, unless
22 otherwise permitted by law;

23 3. Sell any beer or wine at any hour other than between the
24 hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through

1 Sunday. Retail wine and retail beer licensees shall be permitted to
2 sell beer and wine on the day of any General, Primary, Runoff
3 Primary or Special Election whether on a national, state, county or
4 city election;

5 4. Sell any beer and wine on credit; provided, that acceptance
6 by a grocery store, convenience store or drug store of a cash or
7 debit card, or a nationally recognized credit card, in lieu of
8 actual cash payment does not constitute the extension of credit;
9 provided, further, as used in this section:

10 a. "cash or debit card" means any instrument or device
11 whether known as a debit card or by any other name,
12 issued with or without fee by an issuer for the use of
13 the cardholder in depositing, obtaining or
14 transferring funds from a consumer banking electronic
15 facility, and

16 b. "nationally recognized credit card" means any
17 instrument or device, whether known as a credit card,
18 credit plate, charge plate or by any other name,
19 issued with or without fee by an issuer for the use of
20 the cardholder in obtaining money, goods, services or
21 anything else of value on credit which is accepted by
22 over one hundred retail locations;

23 5. Offer or furnish any prize, premium, gift or similar
24 inducement to a consumer in connection with the sale of beer or

1 wine, except that goods or merchandise included by the manufacturer
2 in packaging with beer or wine or for packaging with beer or wine
3 shall not be included in this prohibition, nor shall a retail wine
4 or retail beer license holder selling wine or beer at a multiunit
5 discount be included in this prohibition; but no retail wine or
6 retail beer licensee shall sell any beer or wine prepackaged with
7 other goods or merchandise at a price which is greater than the
8 price at which the alcoholic beverage alone is sold; or

9 6. Pay for beer or wine by a check or draft which is dishonored
10 by the drawee when presented to such drawee for payment; and the
11 ABLE Commission may cancel or suspend the license of any retailer
12 who has given a check or draft, as maker or endorser, which is so
13 dishonored upon presentation.

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

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