

An Act

ENROLLED HOUSE
BILL NO. 1096

By: Strom and McEntire of the
House

and

Coleman and Bergstrom of
the Senate

An Act relating to alcoholic beverages; amending Section 93, Chapter 366, O.S.L. 2016, as amended by Section 2, Chapter 431, O.S.L. 2019 (37A O.S. Supp. 2020, Section 3-123), which relates to wholesalers, beer distributors and retailers; authorizing certain social media exchanges; defining term; and providing an effective date.

SUBJECT: Alcoholic beverages

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

SECTION 1. AMENDATORY Section 93, Chapter 366, O.S.L. 2016, as amended by Section 2, Chapter 431, O.S.L. 2019 (37A O.S. Supp. 2020, 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 suspend or revoke a license as follows:

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

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

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

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

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

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

15. 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. 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. 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. 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. 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.

SECTION 2. This act shall become effective November 1, 2021.

Passed the House of Representatives the 9th day of March, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 12th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____