

1 **SENATE FLOOR VERSION**

2 March 30, 2021

3 ENGROSSED HOUSE
4 BILL NO. 1096

By: Strom and McEntire of the
House

5 and

6 Coleman of the Senate

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8
9 An Act relating to alcoholic beverages; amending
10 Section 93, Chapter 366, O.S.L. 2016, as amended by
11 Section 2, Chapter 431, O.S.L. 2019 (37A O.S. Supp.
12 2020, Section 3-123), which relates to wholesalers,
beer distributors and retailers; authorizing certain
social media exchanges; defining term; and providing
an effective date.

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

16 SECTION 1. AMENDATORY Section 93, Chapter 366, O.S.L.
17 2016, as amended by Section 2, Chapter 431, O.S.L. 2019 (37A O.S.
18 Supp. 2020, Section 3-123), is amended to read as follows:

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

22 1. To discriminate, directly or indirectly, in price between
23 one wine and spirits wholesaler and another wine and spirits
24 wholesaler, when that manufacturer has not designated a single wine

1 and spirits wholesaler, or between one retailer and another retailer
2 purchasing alcoholic beverages bearing the same brand or trade name
3 and of like age and quality, unless otherwise provided by law; or

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

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

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

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

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

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

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

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

- 1 1. Furnish point-of-sale advertising materials and consumer
2 advertising specialties, as those terms are defined in 27 C.F.R.,
3 Section 6.84 and in compliance with the other limits and
4 restrictions provided in 27 C.F.R., Section 6.84;
- 5 2. Give or sell product displays, including but not limited to
6 barrels and tubs, provided that the value of such displays does not
7 exceed the limits and restrictions provided in 27 C.F.R., Section
8 6.83;
- 9 3. Build product displays, accessible to the customer and
10 without disturbing competitors' products, for the product being
11 delivered by the beer distributor;
- 12 4. Affix pricing to the shelf strip or product display for the
13 product being delivered by the beer distributor, small brewer self-
14 distributor or brewpub self-distributor, or brewed by the brewer;
- 15 5. Routinely stock and restock shelves and cold boxes and
16 rotate product that has been sold to the retail licensee by the beer
17 distributor, small brewer self-distributor or brewpub self-
18 distributor, or brewed by the brewer;
- 19 6. Furnish things of value to a temporary retailer, as defined
20 in 27 C.F.R., Section 6.85;
- 21 7. Sell equipment or supplies to a retail licensee, provided
22 the equipment or supplies are sold at a price not less than the cost
23 to the industry member and payment is collected within thirty (30)
24 days of the sale;

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

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

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

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

20 12. Furnish or give a sample of beer or cider to a retailer who
21 has not purchased the brand from that brewer, beer distributor,
22 small brewer self-distributor or brewpub self-distributor within the
23 last twelve (12) months, provided that the brewer, beer distributor,
24 small brewer self-distributor or brewpub self-distributor may not

1 give more than thirty-six (36) ounces of any brand of beer or cider
2 to a specific retailer;

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

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

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

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

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

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

1 request free social media advertising from a brewer, beer
2 distributor, small brewer, small brewer self-distributor or brewpub
3 self-distributor; provided, nothing in this section shall prohibit a
4 brewer, beer distributor, small brewer, small brewer self-
5 distributor or brewpub self-distributor from sharing, reposting or
6 forwarding a social media post by a retail, mixed beverage, on-
7 premises beer and wine, public event, special event, charitable
8 auction, charitable alcoholic beverage event or complimentary
9 beverage licensee, as long as the sharing, reposting or forwarding
10 of the social media post does not contain the retail price of any
11 alcoholic beverage. No brewer, beer distributor, small brewer,
12 small brewer self-distributor or brewpub self-distributor shall pay
13 or reimburse a retail, mixed beverage, on-premises beer and wine,
14 public event, special event, charitable auction, charitable
15 alcoholic beverage event or complimentary beverage licensee,
16 directly or indirectly, for any social media advertising services.
17 No retail, mixed beverage, on-premises beer and wine, public event,
18 special event, charitable auction, charitable alcoholic beverage
19 event or complimentary beverage licensee shall accept any payment or
20 reimbursement, directly or indirectly, for any social media
21 advertising service offered by a brewer, beer distributor, small
22 brewer, small brewer self-distributor or brewpub self-distributor.
23 For purposes of this paragraph, "social media" means a service,
24 platform or site where users communicate with one another and share

1 media, such as pictures, videos, music and blogs, with other users
2 free of charge; or

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

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

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

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

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

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

23 c. at a sports or entertainment event that the
24 representatives of a brewer, beer distributor, small

1 brewer self-distributor or brewpub self-distributor
2 attend with the retailer;

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

5 a. displaying products at a convention or trade show,

6 b. renting display booth space if the rental fee is the
7 same as paid by all exhibitors at the event,

8 c. providing its own hospitality which is independent
9 from association-sponsored activities,

10 d. purchasing tickets to functions and paying
11 registration fees if the payments or fees are the same
12 as paid by all attendees, participants or exhibitors
13 at the event, or

14 e. making payments for advertisements in programs or
15 brochures issued by retailer associations at a
16 convention or trade show; or

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

19 a. the sign bears conspicuous and substantial advertising
20 matter about the product or the brewer, beer
21 distributor, small brewer self-distributor or brewpub
22 self-distributor which is permanently inscribed or
23 securely affixed,

- 1 b. the retailer is not compensated, directly or
2 indirectly, such as through a sign company, for
3 displaying the signs, and
4 c. a permanent outdoor sign does not contain the
5 retailer's name.

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

7 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
8 March 30, 2021 - DO PASS
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