

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 2631

By: Echols of the House

and

Rosino of the Senate

[alcoholic beverages - wine and spirits wholesalers]

10 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

12 "An Act relating to alcoholic beverages; amending
37A O.S. 2021, Section 3-116, which relates to
13 the sale of alcoholic beverages; providing that
wine and spirits wholesalers are authorized to
14 ship and fill orders non-sequentially under
certain conditions; defining term; providing for
15 certain notice between manufacturers,
wholesalers, and ABLE Commission; requiring ABLE
16 Commission to provide certain information; and
providing an effective date.

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

20 SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-116, is
21 amended to read as follows:

22 Section 3-116. A. Any manufacturer or subsidiary of a
23 manufacturer who markets its products solely through a subsidiary or
24 subsidiaries, a distiller, rectifier, bottler, winemaker or importer

1 of alcoholic beverages, bottled or made in a foreign country, either
2 within or without this state, may sell such brands or kinds of
3 alcoholic beverages to every licensed wine and spirits wholesaler
4 who desires to purchase the same, on the same price basis and
5 without discrimination or inducements, and shall further be required
6 to sell such beverages only to those persons licensed as wine and
7 spirits wholesalers.

8 B. The provisions of subsection A of this section shall not
9 apply to a brewer except as otherwise stated herein. In the event a
10 brewer, who has entered into territorial distribution agreements
11 with beer distributors in this state, markets wine and spirits
12 products in this state either itself or through a subsidiary or
13 affiliate, then such brewer, subsidiary or affiliate may elect to
14 designate beer distributors, with whom it has entered into
15 territorial distribution agreements, as its designated wholesalers
16 for any wine and spirit products to be sold by the brewer,
17 subsidiary or affiliate within ~~said~~ the beer distributors' existing
18 territories, provided such beer distributors must also hold a wine
19 and spirits wholesaler license. In such event, the beer
20 distributors shall be deemed designated wholesalers for the
21 territory with respect to the designated products. Provided, in the
22 event a beer distributor has not obtained a wine and spirits
23 license, has elected not to sell wine and spirits in its respective
24 territory or, in the brewer's commercially reasonable discretion, is

1 not suitable to sell wine and spirits in its respective territory,
2 then the brewer, subsidiary or affiliate may extend the territory of
3 an existing beer distributor, with whom it has entered into a
4 territorial distribution agreement and who holds a wine and spirits
5 wholesaler license, for ~~said~~ the territory. For purposes of this
6 subsection only, the phrase "subsidiary or affiliate" shall mean any
7 entity that the brewer controls, is controlled by, or is under
8 common control with, during the time that the wine and spirits
9 brands are offered for sale in this state, and "control" shall mean
10 ownership of more than fifty percent (50%) of the voting securities
11 or assets of, or the ability to dictate the material operations of,
12 another entity. If the brewer, subsidiary or affiliate sells the
13 wine and spirits brands to a manufacturer other than one that would
14 otherwise fall within the provisions of this subsection, then the
15 rights provided in this subsection which relate to the wine and
16 spirits brands shall terminate. The rights provided to beer
17 distributors pursuant to Section 3-111 of this title shall not be
18 extended to apply to the wine or spirits brands distributed pursuant
19 to this subsection.

20 C. No manufacturer shall require a wine and spirits wholesaler
21 to purchase any alcoholic beverages or any goods, wares or
22 merchandise as a condition to the wine and spirits wholesaler
23 obtaining or being entitled to purchase any alcoholic beverages.

24

1 Violation of this section shall be a misdemeanor. Conviction
2 hereunder shall automatically revoke the violator's license.

3 D. In the event a manufacturer or nonresident seller has not
4 designated a designated wholesaler to sell its products in the
5 state, the nondesignated products shall be posted in accordance with
6 the following:

7 1. On the first business day of each month, the manufacturer
8 shall post with the ABLE Commission the price of all wine and
9 spirits it proposes to offer for sale to licensed wine and spirit
10 wholesalers in this state. All prices shall become effective on the
11 first business day of the following month and shall remain in effect
12 and unchanged for a period of not less than one (1) month. The
13 posting shall be submitted on a form approved by the ABLE Commission
14 and shall identify the brand, size, alcohol content and price of
15 each item intended to be offered for sale. No change or
16 modification of the posted price shall be permitted except upon
17 written permission from the ABLE Commission based on good cause
18 shown;

19 2. When a new item is registered, or an old item is
20 discontinued, or any change is made by a manufacturer or nonresident
21 seller as to price, age, proof, label or type of bottle of any item
22 offered for sale in this state, such new item, discontinued item or
23 change in price, age, proof, label or type of bottle of any item
24 shall be listed separately on the cover page of the price schedule

1 and, in the case of prices changed, shall reflect both the old and
2 the new price of the item changed. All new items and changes as to
3 age, proof, label or type of bottle in which any item is offered for
4 sale shall first be submitted in writing to the ABLE Commission for
5 approval under such requirements as it may deem proper. Approval or
6 disapproval of price changes shall not be required if filed in
7 conformity with the provisions of this subsection.

8 a. In addition to the foregoing requirements, the
9 manufacturer shall, at the same time, on regular forms
10 provided by the ABLE Commission, re-register all items
11 of alcoholic beverage which the manufacturer had
12 registered and offered for sale in this state during
13 the previous price period.

14 b. A short form of price posting may be permitted by the
15 ABLE Commission for any price period in which no new
16 item is offered or old item discontinued, or change is
17 made in the price, age, proof, label or type of bottle
18 of any item offered by any manufacturer. Such short
19 form shall contain only such statements as the
20 Director may require or permit;

21 3. The brand name, size, proof and type of alcoholic beverages
22 must be shown on each container sold in this state;

23 4. No brand of alcoholic beverage shall be listed on a price
24 list or posting in more than one place, or offered for sale by more

1 than one method, or at more than one price, except as provided
2 hereafter:

3 a. a manufacturer who has posted F.O.B. prices from a
4 foreign shipping point shall also list the same
5 item(s) at an F.O.B. point within the continental
6 United States. Only one United States F.O.B. point
7 shall be permitted, and

8 b. a manufacturer may list on their price list or posting
9 an item of specific size that may be packaged in more
10 than one type or design container, provided that the
11 containers being offered have been approved by the
12 ABLE Commission;

13 5. The manufacturer shall sell to the wine and spirits
14 wholesalers all items of wine and spirits at the current posted
15 price in effect on the date of the shipment as shown on the
16 manifest, bill of lading or invoice;

17 6. A full and correct copy of each ~~said~~ such price registration
18 shall be transmitted to wine and spirits wholesalers on the same day
19 such prices are filed with or mailed to the ABLE Commission. Proof
20 of such mailing or delivery shall be furnished the ABLE Commission
21 by the manufacturer with the price registration or upon request;

22 7. The sale, or offer to sell, of any item of alcoholic
23 beverage by a manufacturer to a wine and spirits wholesaler at a
24

1 price not in compliance with the price posted with the ABLE
2 Commission may be deemed a violation; and

3 8. This subsection shall not apply to a manufacturer that has
4 designated a wine and spirits wholesaler to sell its product in the
5 state or a brewer who has appointed a beer distributor as a
6 designated wholesaler pursuant to subsection B of ~~Section 3-116 of~~
7 ~~this title~~ this section, with respect to designated products.

8 E. Every wine and spirits wholesaler is authorized:

9 1. To ship orders to retailers non-sequentially; and

10 2. To fill orders non-sequentially only on products that have
11 been designated as being in short supply.

12 As used in this subsection, "short supply" means those
13 individual brand labels of alcoholic beverages normally supplied by
14 the manufacturer or manufacturers that, for whatever reason, lack
15 sufficient supply to fully satisfy the demand of the Oklahoma retail
16 and/or on-premises market.

17 F. Upon the manufacturer notifying the wholesalers of products
18 designated as short supply, the wholesaler shall also then notify
19 the ABLE Commission as soon as practical.

20 G. The ABLE Commission shall publish a list of every product
21 designated as short supply by the Director on its website every
22 thirty (30) days. After thirty (30) days, the wholesaler shall send
23 an updated notice to the ABLE Commission if the product or products
24 are in short supply. The ABLE Commission shall remove those

1 products if notification is not received. These activities shall
2 not constitute a violation of this title or any rule promulgated
3 under this title."

4

5 Passed the Senate the 25th day of April, 2023.

6

7

Presiding Officer of the Senate

8

9 Passed the House of Representatives the ____ day of _____,
10 2023.

11

12

Presiding Officer of the House
of Representatives

13

14

15

16

17

18

19

20

21

22

23

24

1 ENGROSSED HOUSE
2 BILL NO. 2631

By: Echols of the House

and

Rosino of the Senate

3
4
5
6
7 [alcoholic beverages - wine and spirits wholesalers
8]
9
10
11

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

13 SECTION 2. AMENDATORY 37A O.S. 2021, Section 3-116, is
14 amended to read as follows:

15 Section 3-116. A. Any manufacturer or subsidiary of a
16 manufacturer who markets its products solely through a subsidiary or
17 subsidiaries, a distiller, rectifier, bottler, winemaker or importer
18 of alcoholic beverages, bottled or made in a foreign country, either
19 within or without this state, may sell such brands or kinds of
20 alcoholic beverages to every licensed wine and spirits wholesaler
21 who desires to purchase the same, on the same price basis and
22 without discrimination or inducements, and shall further be required
23 to sell such beverages only to those persons licensed as wine and
24 spirits wholesalers.

1 B. The provisions of subsection A of this section shall not
2 apply to a brewer except as otherwise stated herein. In the event a
3 brewer, who has entered into territorial distribution agreements
4 with beer distributors in this state, markets wine and spirits
5 products in this state either itself or through a subsidiary or
6 affiliate, then such brewer, subsidiary or affiliate may elect to
7 designate beer distributors, with whom it has entered into
8 territorial distribution agreements, as its designated wholesalers
9 for any wine and spirit products to be sold by the brewer,
10 subsidiary or affiliate within said beer distributors' existing
11 territories, provided such beer distributors must also hold a wine
12 and spirits wholesaler license. In such event, the beer
13 distributors shall be deemed designated wholesalers for the
14 territory with respect to the designated products. Provided, in the
15 event a beer distributor has not obtained a wine and spirits
16 license, has elected not to sell wine and spirits in its respective
17 territory or, in the brewer's commercially reasonable discretion, is
18 not suitable to sell wine and spirits in its respective territory,
19 then the brewer, subsidiary or affiliate may extend the territory of
20 an existing beer distributor, with whom it has entered into a
21 territorial distribution agreement and who holds a wine and spirits
22 wholesaler license, for said territory. For purposes of this
23 subsection only, the phrase "subsidiary or affiliate" shall mean any
24 entity that the brewer controls, is controlled by, or is under

1 common control with, during the time that the wine and spirits
2 brands are offered for sale in this state, and "control" shall mean
3 ownership of more than fifty percent (50%) of the voting securities
4 or assets of, or the ability to dictate the material operations of,
5 another entity. If the brewer, subsidiary or affiliate sells the
6 wine and spirits brands to a manufacturer other than one that would
7 otherwise fall within the provisions of this subsection, then the
8 rights provided in this subsection which relate to the wine and
9 spirits brands shall terminate. The rights provided to beer
10 distributors pursuant to Section 3-111 of this title shall not be
11 extended to apply to the wine or spirits brands distributed pursuant
12 to this subsection.

13 C. No manufacturer shall require a wine and spirits wholesaler
14 to purchase any alcoholic beverages or any goods, wares or
15 merchandise as a condition to the wine and spirits wholesaler
16 obtaining or being entitled to purchase any alcoholic beverages.

17 Violation of this section shall be a misdemeanor. Conviction
18 hereunder shall automatically revoke the violator's license.

19 D. In the event a manufacturer or nonresident seller has not
20 designated a designated wholesaler to sell its products in the
21 state, the nondesignated products shall be posted in accordance with
22 the following:

23 1. On the first business day of each month, the manufacturer
24 shall post with the ABLE Commission the price of all wine and

1 spirits it proposes to offer for sale to licensed wine and spirit
2 wholesalers in this state. All prices shall become effective on the
3 first business day of the following month and shall remain in effect
4 and unchanged for a period of not less than one (1) month. The
5 posting shall be submitted on a form approved by the ABLE Commission
6 and shall identify the brand, size, alcohol content and price of
7 each item intended to be offered for sale. No change or
8 modification of the posted price shall be permitted except upon
9 written permission from the ABLE Commission based on good cause
10 shown;

11 2. When a new item is registered, or an old item is
12 discontinued, or any change is made by a manufacturer or nonresident
13 seller as to price, age, proof, label or type of bottle of any item
14 offered for sale in this state, such new item, discontinued item or
15 change in price, age, proof, label or type of bottle of any item
16 shall be listed separately on the cover page of the price schedule
17 and, in the case of prices changed, shall reflect both the old and
18 the new price of the item changed. All new items and changes as to
19 age, proof, label or type of bottle in which any item is offered for
20 sale shall first be submitted in writing to the ABLE Commission for
21 approval under such requirements as it may deem proper. Approval or
22 disapproval of price changes shall not be required if filed in
23 conformity with the provisions of this subsection.

24

1 a. In addition to the foregoing requirements, the
2 manufacturer shall, at the same time, on regular forms
3 provided by the ABLE Commission, re-register all items
4 of alcoholic beverage which the manufacturer had
5 registered and offered for sale in this state during
6 the previous price period.

7 b. A short form of price posting may be permitted by the
8 ABLE Commission for any price period in which no new
9 item is offered or old item discontinued, or change is
10 made in the price, age, proof, label or type of bottle
11 of any item offered by any manufacturer. Such short
12 form shall contain only such statements as the
13 Director may require or permit;

14 3. The brand name, size, proof and type of alcoholic beverages
15 must be shown on each container sold in this state;

16 4. No brand of alcoholic beverage shall be listed on a price
17 list or posting in more than one place, or offered for sale by more
18 than one method, or at more than one price, except as provided
19 hereafter:

20 a. a manufacturer who has posted F.O.B. prices from a
21 foreign shipping point shall also list the same
22 item(s) at an F.O.B. point within the continental
23 United States. Only one United States F.O.B. point
24 shall be permitted, and

1 b. a manufacturer may list on their price list or posting
2 an item of specific size that may be packaged in more
3 than one type or design container, provided that the
4 containers being offered have been approved by the
5 ABLE Commission;

6 5. The manufacturer shall sell to the wine and spirits
7 wholesalers all items of wine and spirits at the current posted
8 price in effect on the date of the shipment as shown on the
9 manifest, bill of lading or invoice;

10 6. A full and correct copy of each said price registration
11 shall be transmitted to wine and spirits wholesalers on the same day
12 such prices are filed with or mailed to the ABLE Commission. Proof
13 of such mailing or delivery shall be furnished the ABLE Commission
14 by the manufacturer with the price registration or upon request;

15 7. The sale, or offer to sell, of any item of alcoholic
16 beverage by a manufacturer to a wine and spirits wholesaler at a
17 price not in compliance with the price posted with the ABLE
18 Commission may be deemed a violation; and

19 8. This subsection shall not apply to a manufacturer that has
20 designated a wine and spirits wholesaler to sell its product in the
21 state or a brewer who has appointed a beer distributor as a
22 designated wholesaler pursuant to subsection B of ~~Section 3-116 of~~
23 ~~this title~~ this section, with respect to designated products.

