

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1315

By: McEntire of the House

4 and

5 Leewright of the Senate

6
7 An Act relating to alcoholic beverages; amending
8 Section 89, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
9 2018, Section 3-119), which relates to prohibited
10 acts of certain licensees; modifying circumstances in
11 which certain products may be replaced; expanding the
12 period in which certain wine or spirits may be
replaced; amending Section 129, Chapter 366, O.S.L.
2016 (37A O.S. Supp. 2018, Section 5-126), which
relates to record keeping; reducing records retention
period; authorizing certain audit period upon certain
audit findings; and providing an effective date.

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15 AUTHOR: Add the following Senate Coauthor: Bergstrom

16 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
17 entire bill and insert

18 "An Act relating to alcoholic beverages; amending
19 Section 89, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
20 2018, Section 3-119), which relates to prohibited
21 acts of certain licensees; modifying circumstances in
22 which certain products may be replaced; expanding the
23 period in which certain wine or spirits may be
replaced; amending Section 129, Chapter 366, O.S.L.
2016 (37A O.S. Supp. 2018, Section 5-126), which
relates to record keeping; authorizing certain audit
period upon certain audit findings; providing certain
exception to audit period upon certain audit
findings; prohibiting limited audit upon certain
audit findings; and providing an effective date.

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

3 SECTION 1. AMENDATORY Section 89, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2018, Section 3-119), is amended to read as
5 follows:

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

12 1. Have any financial interest in any premises upon which any
13 alcoholic beverage is sold at retail or in any business connected
14 with the retailing of alcoholic beverages; provided, nothing in this
15 act shall prohibit the operation of a mixed beverage licensee, beer
16 and wine licensee or caterer licensee by an entity which has common
17 owners with the holder of a small brewer license or a brewpub
18 license;

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

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

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

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

16 a. delivery in good faith, through mistake, inadvertence
17 or oversight, of an alcoholic beverage that was not
18 ordered by a retailer, mixed beverage licensee, on-
19 premises beer and wine licensee, caterer, public event
20 or special event licensee to such licensee ~~shall not~~
21 ~~be considered a violation of this paragraph, nor~~
22 ~~shall,~~

23 b. replacement of product because of breakage that
24 occurred while the alcoholic beverages were in transit

1 from the wholesaler to the licensee, as long as the
2 licensee notifies the wine and spirits wholesaler or
3 the beer distributor of the breakage in writing within
4 five (5) business days after the delivery of the
5 product,

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

13 d. replacement of ~~product~~ wine or spirits with torn or
14 defective labels, short-filled cases ~~or,~~ other defects
15 or cork-tainted wine that make the product unsaleable,
16 as long as the licensee notifies the wine and spirits
17 wholesaler ~~or the beer distributor~~ of the error,
18 ~~breakage~~ or defect in writing ~~within five (5) business~~
19 ~~days~~ after delivery of the product; or

20 6. Extend credit to any retailer, other than holders of Federal
21 Liquor Stamps on United States government reservations and
22 installations, mixed beverage, public event or on-premises beer and
23 wine licensee or caterer, other than a state lodge located in a
24 county which has approved the retail sale of alcoholic beverages by

1 the individual drink for on-premises consumption. The acceptance of
2 a postdated check or draft or the failure to deposit for collection
3 a current check or draft by the second banking day after receipt
4 shall be deemed an extension of credit. Violation of this section
5 shall be grounds for suspension of the license.

6 SECTION 2. AMENDATORY Section 129, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2018, Section 5-126), is amended to read as
8 follows:

9 Section 5-126. A. Every manufacturer, wine and spirits
10 wholesaler, beer distributor, nonresident seller, retailer, mixed
11 beverage, caterer, public event and special event licensee shall
12 keep a record of all alcoholic beverages imported, purchased,
13 received, manufactured, produced, sold, delivered or otherwise
14 disposed of, and the amount of all alcoholic beverages on hand, as
15 herein provided. Such records must be kept for a period of at least
16 three (3) years as required in Title 27, Code of Federal
17 Regulations, Chapter 1, and shall include:

- 18 1. The date;
- 19 2. The number of the invoice, manifest, bill of lading or
20 similar type document; and
- 21 3. The total amount of alcoholic beverages purchased, imported,
22 received, manufactured, produced, sold, delivered or otherwise
23 disposed of, by such licensee in each transaction.

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

3 B. If a manufacturer, wine and spirits wholesaler, beer
4 distributor, nonresident seller, retailer, mixed beverage, caterer,
5 public event or special event licensee has been previously audited
6 by the Tax Commission with an audit finding that the licensee
7 correctly reported and kept sufficient records for audit purposes,
8 the next subsequent audit shall be limited to records kept for one
9 (1) year prior to the date of such audit; provided, however, if an
10 audit finding determines that the licensee incorrectly reported or
11 failed to keep sufficient records for audit purposes, then the audit
12 shall not be limited by the provisions of this subsection. If any
13 audit limited by the provisions in this subsection determines that
14 the licensee has incorrectly reported or failed to keep sufficient
15 records for audit purposes, then the licensee shall no longer be
16 eligible for limited audits.

17 SECTION 3. This act shall become effective November 1, 2019."
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1 Passed the Senate the 25th day of April, 2019.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

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8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 1315

By: McEntire of the House

3 and

4 Leewright of the Senate

5
6
7 An Act relating to alcoholic beverages; amending
8 Section 89, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
9 2018, Section 3-119), which relates to prohibited
10 acts of certain licensees; modifying circumstances in
11 which certain products may be replaced; expanding the
12 period in which certain wine or spirits may be
replaced; amending Section 129, Chapter 366, O.S.L.
2016 (37A O.S. Supp. 2018, Section 5-126), which
relates to record keeping; reducing records retention
period; authorizing certain audit period upon certain
audit findings; and providing an effective date.

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

16 SECTION 4. AMENDATORY Section 89, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2018, Section 3-119), is amended to read as
18 follows:

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

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

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

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

15 4. Require any wine and spirits wholesaler, beer distributor,
16 retailer, mixed beverage, on-premises beer and wine licensee, public
17 event or caterer to purchase and dispose of any quota of alcoholic
18 beverages, or to require any retailer to purchase any kind, type,
19 size, container or brand of alcoholic beverages in order to obtain
20 any other kind, type, size, container or brand of alcoholic
21 beverages;

22 5. Sell to any retailer, mixed beverage, on-premises beer and
23 wine licensee, public event or caterer any alcoholic beverage on
24 consignment, or upon condition, or with the privilege of return, or

1 on any condition other than a bona fide sale; provided, the
2 following shall not be considered a violation of this paragraph:

3 a. ~~the~~ delivery in good faith, through mistake,
4 inadvertence or oversight, of an alcoholic beverage
5 that was not ordered by a retailer, mixed beverage
6 licensee, on-premises beer and wine licensee, caterer,
7 public event or special event licensee to such
8 licensee ~~shall not be considered a violation of this~~
9 ~~paragraph, nor shall,~~

10 b. replacement of product because of breakage that
11 occurred while the alcoholic beverages were in transit
12 from the wholesaler to the licensee, as long as the
13 licensee notifies the wine and spirits wholesaler or
14 the beer distributor of the breakage in writing within
15 five (5) business days after the delivery of the
16 product,

17 c. replacement of beer with torn or defective labels,
18 short-filled cases or other defects that make the
19 product unsaleable, as long as the licensee notifies
20 the beer distributor of the error or defect in writing
21 within five (5) business days after delivery of the
22 product, or

23 d. replacement of ~~product~~ wine or spirits with torn or
24 defective labels, short-filled cases or other defects

1 that make the product unsaleable, as long as the
2 licensee notifies the wine and spirits wholesaler ~~or~~
3 ~~the beer distributor~~ of the error, ~~breakage~~ or defect
4 in writing within ~~five (5) business days~~ twelve (12)
5 months after delivery of the product; or

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

16 SECTION 5. AMENDATORY Section 129, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2018, Section 5-126), is amended to read as
18 follows:

19 Section 5-126. A. Every manufacturer, wine and spirits
20 wholesaler, beer distributor, nonresident seller, retailer, mixed
21 beverage, caterer, public event and special event licensee shall
22 keep a record of all alcoholic beverages imported, purchased,
23 received, manufactured, produced, sold, delivered or otherwise
24 disposed of, and the amount of all alcoholic beverages on hand, as

1 herein provided. Such records must be kept for a period of at least
2 ~~three (3) years~~ one (1) year, except as provided in subsection B of
3 this section, and shall include:

- 4 1. The date;
- 5 2. The number of the invoice, manifest, bill of lading or
6 similar type document; and
- 7 3. The total amount of alcoholic beverages purchased, imported,
8 received, manufactured, produced, sold, delivered or otherwise
9 disposed of, by such licensee in each transaction.

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

12 B. Every manufacturer, wine and spirits wholesaler, beer
13 distributor, nonresident seller, retailer, mixed beverage, caterer,
14 public event and special event licensee that has been audited by the
15 Tax Commission in the previous three-year period prior to the
16 effective date of this act with an audit finding that the licensee
17 had incorrectly reported or had failed to keep sufficient records
18 for audit purposes or upon an audit by the Tax Commission on or
19 after November 1, 2019, with a finding that the licensee had
20 incorrectly reported or had failed to keep sufficient records for
21 audit purposes shall be required to maintain and keep the records
22 specified in subsection A of this section for at least three (3)
23 years following the date of audit.

24 SECTION 6. This act shall become effective November 1, 2019.

1 Passed the House of Representatives the 12th day of March, 2019.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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8 _____
9 Presiding Officer of the Senate