

An Act

ENROLLED HOUSE
BILL NO. 1315

By: McEntire of the House

and

Leewright and Bergstrom of
the Senate

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

SUBJECT: Alcoholic beverages

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

SECTION 1. AMENDATORY 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, is amended to read as follows:

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

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

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

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

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

5. Sell to any retailer, mixed beverage, on-premises beer and wine licensee, public event or caterer any alcoholic beverage on

consignment, or upon condition, or with the privilege of return, or on any condition other than a bona fide sale; provided, the following shall not be considered a violation of this paragraph:

- a. delivery in good faith, through mistake, inadvertence or oversight, of an alcoholic beverage that was not ordered by a retailer, mixed beverage licensee, on-premises beer and wine licensee, caterer, public event or special event licensee to such licensee ~~shall not be considered a violation of this paragraph, nor shall,~~
- b. replacement of product breakage that occurred while the alcoholic beverages were in transit from the wholesaler to the licensee, or
- c. replacement of ~~product with torn or defective labels, short-filled cases or other defects~~ cork-tainted wine that ~~make~~ makes the product unsaleable, as long as the licensee notifies the wine and spirits wholesaler ~~or the beer distributor~~ of the error, ~~breakage or defect~~ in writing within ~~five (5) business~~ ninety (90) days after delivery of the product; or

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

SECTION 2. AMENDATORY Section 93, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018, 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 self-distributor or brewpub self-distributor in an advertisement of such brewer, beer distributor, small brewer self-distributor or brewpub self-distributor so long as the requirements of 27 C.F.R., Section 6.98 are satisfied; 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 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 by the Tax Commission with an audit finding that the licensee correctly reported and kept sufficient records for audit purposes, the next subsequent audit shall be limited to records kept for one (1) year prior to the date of such audit; provided, however, if an audit finding determines that the licensee incorrectly reported or failed to keep sufficient records for audit purposes, then the audit shall not be limited by the provisions of this subsection. If any audit limited by the provisions of this subsection determines that the licensee has incorrectly reported or failed to keep sufficient records for audit purposes, then the licensee shall no longer be eligible for limited audits.

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

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

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

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

3. Sell any beer or wine at any hour other than between the hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through Sunday. Retail wine and retail beer licensees shall be permitted to sell beer and wine on the day of any General, Primary, Runoff Primary or Special Election whether on a national, state, county or city election;

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

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

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

5. Offer or furnish any prize, premium, gift or similar inducement to a consumer in connection with the sale of beer or wine, except that goods or merchandise included by the manufacturer in packaging with beer or wine or for packaging with beer or wine shall not be included in this prohibition, nor shall a retail wine

or retail beer license holder selling wine or beer at a multiunit discount be included in this prohibition; but no retail wine or retail beer licensee shall sell any beer or wine prepackaged with other goods or merchandise at a price which is greater than the price at which the alcoholic beverage alone is sold; or

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

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

Passed the House of Representatives the 21st day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 22nd day of May, 2019.

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: _____