

An Act

ENROLLED SENATE
BILL NO. 1395

By: Bice of the Senate

and

Mulready of the House

An Act relating to alcoholic beverages; amending Section 78, Chapter 366, O.S.L. 2016, as amended by Section 14, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2017, Section 3-108), which relates to the Alcoholic Beverage Control Act; providing for disposition of certain inventory; and providing an effective date.

SUBJECT: Alcoholic beverage brand inventory

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

SECTION 1. AMENDATORY Section 78, Chapter 366, O.S.L. 2016, as amended by Section 14, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2017, Section 3-108), is amended to read as follows:

Section 3-108. A. The provisions of this section shall be in effect except as otherwise provided in Article XXVIII A of the Oklahoma Constitution.

B. Subject to the provisions of subsection D of this section, every licensed brewer or cider manufacturer authorized to sell its beer or cider in this state shall:

1. Enter into a distributor agreement with a licensed distributor, as defined herein, to sell the designated brands, including brand extensions, of the brewer or cider manufacturer. The agreement shall designate the sales territory of that licensed distributor and the designated brands to be sold by the licensed distributor. All such distributor agreements shall specifically

authorize this sale of the designated brands by a licensed distributor within that sales territory. All such distributor agreements shall further provide that the licensed manufacturer who desires to sell a brand extension of a low-point beer in Oklahoma must assign the low-point beer brand extension to the licensed distributor to whom the licensed manufacturer granted the exclusive sales territory to the low-point beer brand from which the brand extension resulted;

2. Sell its registered and approved designated brands only to a licensed distributor with whom that brewer or cider manufacturer has a distributor agreement designating the sales territory of the licensed distributor and the designated brands to be sold by the licensed distributor;

3. Authorize only one licensed distributor for each designated sales territory. Such licensed distributor shall be the only licensed distributor for the designated brands of the authorizing brewer or cider manufacturer within that designated sales territory; and

4. Designate who is responsible for the distribution of its designated brands.

C. Subject to the provisions of subsection D of this section, any and all licensed distributors possessing the rights to distribute a low-point beer brand in a specific territory prior to the introduction of that low-point beer's correlating beer brand extension in that specific territory shall retain the right to distribute the low-point beer from which the brand extension resulted.

D. 1. No later than August 2, 2018, a brewer shall assign the exclusive right to distribute a beer brand, including brand extensions thereof, to the low-point beer distributor who was, prior to ~~the effective date of this act~~ October 1, 2018, assigned the exclusive distribution rights to the low-point beer from which the brand extension arose without charge or payment of compensation, unless the low-point beer distributor is, on ~~the effective date of this act~~ October 1, 2018, a brewer of beer or low-point beer and has therefore been distributing low-point beer pursuant to a license to so distribute, subject to the provisions of subsection E of this

section. This subsection shall not apply to a small brewer as defined in Section 1-103 of this title.

2. With respect to brand extensions which arise after October 1, 2018, the brewer or cider manufacturer shall assign the exclusive right to distribute the brand extension to the distributor who has been assigned the exclusive distribution rights to the beer or cider from which the brand extension arose, without charge or payment of compensation.

3. With respect to a brand of beer or cider which was, prior to April 15, 2017, distributed in this state only as strong beer or cider pursuant to the Oklahoma Alcoholic Beverage Control Act then in effect, if a low-point version of the brand is introduced after April 15, 2017, no later than August 2, 2018, the brewer or cider manufacturer shall assign the exclusive rights to distribute the low-point version of the brand to the distributor who was, immediately prior to the introduction of the low-point version of the brand, assigned the exclusive distribution rights to the strong version of the brand without charge or payment of compensation.

4. No later than August 2, 2018, with respect to dual strength beer, the brewer thereof shall assign the exclusive right to distribute the brands represented by the dual strength beer to either the low-point beer distributor or the nonresident seller who had theretofore been assigned the exclusive distribution rights in the territory to either version of the dual strength beer; provided, however, whichever party is selected by the brewer must compensate the party that was not selected by the brewer for the loss of the distribution rights with respect to that particular territory. Whichever party is selected shall obtain the requisite distributor license and shall be subject to the provisions of ~~this act~~ the Oklahoma Alcoholic Beverage Control Act.

5. Compensation for the purposes of this provision shall be the fair market value of the party losing its distribution rights with respect to the beer within that specific territory. Fair market value shall be determined as set forth in Section 3-111 of this title and shall take into account all aspects of brand valuation, including but not limited to:

- a. the diminished value of the distribution of one version of beer as a consequence of the subsequent introduction of the other version,
- b. the expected annual sales and earnings of the distributor agreement,
- c. the length of time the existing distributor held in the distribution sales agreement, and
- d. any other relevant items of value, such as goodwill and going concern.

E. If a brewer, whether directly or through an affiliate, maintained one or more licenses to distribute low-point beer in this state prior to ~~the effective date of this act~~ October 1, 2018, then up to two of the brewer's low-point beer distribution licenses shall automatically convert to beer distribution licenses ~~upon the effective date of this act~~ on October 1, 2018, and such brewer shall be permitted to continue to distribute beer in two territories within which it currently distributes without the appointment of a distributor for such period of time as determined by the Legislature and consistent with the Constitution of the State of Oklahoma; provided however, it shall not be permitted to distribute beer outside of the territory unless it enters into a distributor agreement with an independent licensed distributor as provided in paragraph 1 of subsection B of this section. This section shall not apply to small brewers that have elected to self-distribute.

F. If, on October 1, 2018, a licensed distributor possesses inventory of a brand that it is no longer authorized to distribute within this state, such inventory shall be sold to a licensed distributor authorized to distribute such brand, at a price not to exceed the total of the actual purchase price of the selling distributor plus the cost of inbound and outbound shipping to the purchasing distributor. The provisions of this paragraph shall not apply to inventory purchased on or after September 15, 2018.

SECTION 2. This act shall become effective October 1, 2018.

Passed the Senate the 13th day of March, 2018.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2018.

Presiding Officer of the House
of Representatives

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: _____