

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 262

By: Garvin

AS INTRODUCED

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 3-116, which relates to sales by licensed wine and spirits wholesaler; authorizing wholesalers to fill orders non-sequentially; and providing an effective date.

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

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

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

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, with respect to designated products.

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E. Every wine and spirits wholesaler is authorized to fill orders non-sequentially. These activities shall not constitute a violation of this title or any rule promulgated under this title.

SECTION 2. This act shall become effective November 1, 2023.

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