

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 688

By: Jolley

4  
5 AS INTRODUCED

6 An Act relating to low-point beer; amending 37 O.S.  
7 2011, Sections 163.18B and 163.18E, which relate to  
8 duties of manufacturer and termination of agreement  
9 with wholesaler; requiring certain agreements to have  
10 certain provisions for sale, transfer and management  
11 changes; prohibiting unreasonable withholding of  
12 consent; deleting quantity of beer applicable to  
13 manufacturer; modifying references; and providing an  
14 effective date.

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

16 SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.18B, is  
17 amended to read as follows:

18 Section 163.18B. Every manufacturer of low-point beer licensed  
19 by the Oklahoma Tax Commission authorizing the licensee to sell its  
20 low-point beer in this state shall:

21 1. Enter into an agreement with a licensed wholesaler to sell  
22 the designated brands of the licensed manufacturer which designates  
23 the sales territory of that licensed wholesaler and the designated  
24 brands to be sold by the licensed wholesaler. All such agreements  
shall specifically authorize the sale of the designated brands by a  
licensed wholesaler within that sales territory. All such

1 agreements shall provide that the licensed manufacturer may not  
2 unreasonably withhold consent to any agreement, transfer or sale of  
3 the licensed wholesaler's business whenever the wholesaler to be  
4 substituted meets the material and reasonable qualifications and  
5 standards required of its wholesalers and, further, shall provide  
6 that the licensed manufacturer may not unreasonably withhold consent  
7 to any change in management or personnel of any licensed wholesaler  
8 unless the potential management or personnel fails to meet the  
9 reasonable qualifications and standards required by the  
10 manufacturer;

11       2. Sell its registered and approved designated brands only to a  
12 licensed wholesaler with whom that licensed manufacturer has an  
13 agreement designating the sales territory of the licensed wholesaler  
14 and the designated brands to be sold by the licensed wholesaler;

15       3. Authorize only one licensed wholesaler for each designated  
16 sales territory. Such licensed wholesaler shall be the only  
17 licensed wholesaler for the designated brands of the authorizing  
18 licensed manufacturer within that designated sales territory; and

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

21       SECTION 2.       AMENDATORY       37 O.S. 2011, Section 163.18E, is  
22 amended to read as follows:

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1 Section 163.18E. A. ~~Nothing in this section shall apply to a~~  
2 ~~manufacturer that produces less than three hundred thousand~~  
3 ~~(300,000) gallons of low-point beer per calendar year.~~

4 ~~B.~~ 1. Except as provided in subsections ~~C~~ B, ~~D~~ C and ~~E~~ D of  
5 this section, no manufacturer shall terminate an agreement with any  
6 wholesaler unless all of the following occur:

7 a. the manufacturer establishes good cause for such  
8 termination,

9 b. the wholesaler receives written notification by  
10 certified mail, return receipt requested, from the  
11 manufacturer of the alleged noncompliance and is  
12 afforded no less than sixty (60) days in which to cure  
13 such noncompliance,

14 c. the wholesaler fails to cure such noncompliance within  
15 the allotted cure period, and

16 d. the manufacturer provides written notice by certified  
17 mail, return receipt requested, to the wholesaler of  
18 such continued noncompliance. The notification shall  
19 contain a statement of the intention of the  
20 manufacturer to terminate or not renew the agreement,  
21 the reasons for termination or nonrenewal and the date  
22 the termination or nonrenewal shall take effect.

23 2. If a wholesaler cures an alleged noncompliance within the  
24 cure period provided in subparagraph b of paragraph 1 of this

1 subsection, any notice of termination from a manufacturer to a  
2 wholesaler shall be null and void.

3 ~~C.~~ B. A manufacturer may immediately terminate an agreement  
4 with a wholesaler, effective upon furnishing written notification to  
5 the wholesaler by certified mail, return receipt requested, for any  
6 of the following reasons:

7 1. The wholesaler's failure to pay any account when due and  
8 upon written demand by the manufacturer for such payment, in  
9 accordance with agreed payment terms;

10 2. The assignment or attempted assignment by the wholesaler for  
11 the benefit of creditors, the institution of proceedings in  
12 bankruptcy by or against the wholesaler, the dissolution or  
13 liquidation of the wholesaler or the insolvency of the wholesaler;

14 3. The revocation or suspension of, or the failure to renew for  
15 a period of more than fourteen (14) days, a wholesaler's state,  
16 local or federal license or permit to sell low-point beer in this  
17 state;

18 4. Failure of a wholesaler to sell his or her ownership  
19 interest in the distribution rights to the manufacturer's low-point  
20 beer within one hundred twenty (120) days after such a wholesaler  
21 has been convicted of a felony that, in the manufacturer's sole  
22 judgment, adversely affects the goodwill of the wholesaler or  
23 manufacturer;

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1           5. A wholesaler has been convicted of, found guilty of or pled  
2 guilty or nolo contendere to, a charge of violating a law or  
3 regulation of the United States or of this state if it materially  
4 and adversely affects the ability of the wholesaler or manufacturer  
5 to continue to sell its low-point beer in this state;

6           6. Any attempted transfer of ownership of the wholesaler, stock  
7 of the wholesaler or stock of any parent corporation of the  
8 wholesaler, or any change in the beneficial ownership or control of  
9 any entity, without obtaining the prior written approval of the  
10 manufacturer, except as may otherwise be permitted pursuant to a  
11 written agreement between the parties;

12           7. Fraudulent conduct in the wholesaler's dealings with the  
13 manufacturer or its low-point beer, including the intentional sale  
14 of low-point beer outside the manufacturer's established quality  
15 standards;

16           8. The wholesaler ceases to conduct business for five (5)  
17 consecutive business days, unless conducting the business is  
18 prevented or rendered impractical due to events beyond the  
19 wholesaler's reasonable control as a result of an act of God, an  
20 insured casualty, war, or a condition of national, state or local  
21 emergency; or

22           9. Any sale of low-point beer, directly or indirectly, to  
23 customers located outside the territory assigned to the wholesaler  
24 by the manufacturer unless expressly authorized by the manufacturer.

1       ~~D.~~ C. The manufacturer shall have the right to terminate an  
2 agreement with a wholesaler at any time by giving the wholesaler at  
3 least ninety (90) days' written notice by certified mail, return  
4 receipt requested; provided, that the manufacturer shall give a  
5 similar notice to all other wholesalers in all other states who have  
6 entered into the same distribution agreement with the manufacturer.

7       ~~E.~~ D. If a particular brand of low-point beer is transferred by  
8 purchase or otherwise from a manufacturer to a successor  
9 manufacturer, the following shall occur:

10       1. The successor manufacturer shall become obligated to all of  
11 the terms and conditions of the agreement in effect on the date of  
12 succession. This subsection applies regardless of the character or  
13 form of the succession. A successor manufacturer has the right to  
14 contractually require its wholesaler to comply with operational  
15 standards of performance, if the standards are uniformly established  
16 for all of the successor manufacturer's wholesalers. A successor  
17 manufacturer may, upon written notice, terminate its agreement, in  
18 whole or in part, with a wholesaler of the manufacturer it  
19 succeeded, for the purpose of transferring the distribution rights  
20 in the wholesaler's territory to a new wholesaler, provided that the  
21 successor wholesaler first pays to the existing wholesaler the fair  
22 market value of the existing wholesaler's business with respect to  
23 the terminated brand or brands;

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1           2. If the successor manufacturer decides to terminate its  
2 agreement with the existing wholesaler for purposes of transfer, the  
3 successor manufacturer shall notify the existing wholesaler in  
4 writing of the successor manufacturer's intent not to appoint the  
5 existing wholesaler for all or part of the existing wholesaler's  
6 territory for the low-point beer. The successor manufacturer shall  
7 mail the notice of termination by certified mail, return receipt  
8 requested, to the existing wholesaler. The successor manufacturer  
9 shall include in the notice the names, addresses and telephone  
10 numbers of the successor wholesaler or wholesalers;

11           3. a. The successor wholesaler shall negotiate with the  
12 existing wholesaler to determine the fair market value  
13 of the existing wholesaler's right to distribute the  
14 low-point beer in the existing wholesaler's territory.  
15 The successor wholesaler and the existing wholesaler  
16 shall negotiate the fair market value in good faith.

17           b. The existing wholesaler shall continue to distribute  
18 the low-point beer in good faith until payment of the  
19 compensation agreed to under subparagraph a of this  
20 paragraph, or awarded under paragraph 4 of this  
21 subsection, is received; and

22           4. a. If the successor wholesaler and the existing  
23 wholesaler fail to reach a written agreement on the  
24 fair market value within thirty (30) days after the

1 existing wholesaler receives the notice required  
2 pursuant to paragraph 2 of this subsection, the  
3 successor wholesaler or the existing wholesaler shall  
4 send a written notice to the other party requesting  
5 arbitration pursuant to the Uniform Arbitration Act,  
6 Part 2 of Article 22 of Title 13, C.R.S. Arbitration  
7 shall be held for the purpose of determining the fair  
8 market value of the existing wholesaler's right to  
9 distribute the low-point beer in the existing  
10 wholesaler's territory.

11 b. Notice of intent to arbitrate shall be sent, as  
12 provided in subparagraph a of this paragraph, not  
13 later than forty (40) days after the existing  
14 wholesaler receives the notice required pursuant to  
15 paragraph 2 of this subsection. The arbitration  
16 proceeding shall conclude not later than sixty (60)  
17 days after the date the notice of intent to arbitrate  
18 is mailed to a party, unless this time is extended by  
19 mutual agreement of the parties and the arbitrator.

20 c. Any arbitration held pursuant to this subsection shall  
21 be conducted in a city within this state that:

- 22 (1) is closest to the existing wholesaler, and
- 23 (2) has a population of more than twenty thousand  
24 (20,000) people.

- 1           d. Any arbitration held pursuant to this paragraph shall  
2           be conducted before one impartial arbitrator to be  
3           selected by the American Arbitration Association or  
4           its successor. The arbitration shall be conducted in  
5           accordance with the rules and procedures of the  
6           Uniform Arbitration Act, Part 2 of Article 22 of Title  
7           13, C.R.S.
- 8           e. An arbitrator's award in any arbitration held pursuant  
9           to this paragraph shall be monetary only and shall not  
10          enjoin or compel conduct. Any arbitration held  
11          pursuant to this paragraph shall be in lieu of all  
12          other remedies and procedures.
- 13          f. The cost of the arbitrator and any other direct costs  
14          of an arbitration held pursuant to this paragraph  
15          shall be equally divided by the parties engaged in the  
16          arbitration. All other costs shall be paid by the  
17          party incurring them.
- 18          g. The arbitrator in any arbitration held pursuant to  
19          this paragraph shall render a written decision not  
20          later than thirty (30) days after the conclusion of  
21          the arbitration, unless this time is extended by  
22          mutual agreement of the parties and the arbitrator.  
23          The decision of the arbitrator is final and binding on  
24          the parties. The arbitrator's award may be enforced

1 by commencing a civil action in any court of competent  
2 jurisdiction. Under no circumstances may the parties  
3 appeal the decision of the arbitrator.

4 h. An existing wholesaler or successor wholesaler who  
5 fails to participate in the arbitration hearings in  
6 any arbitration held pursuant to this paragraph waives  
7 all rights the existing wholesaler or successor  
8 wholesaler would have had in the arbitration and is  
9 considered to have consented to the determination of  
10 the arbitrator.

11 i. If the existing wholesaler does not receive payment  
12 from the successor wholesaler of the settlement or  
13 arbitration award required under paragraph 2 or 3 of  
14 this subsection within thirty (30) days after the date  
15 of the settlement or arbitration award:

16 (1) the existing wholesaler shall remain the  
17 wholesaler of the low-point beer in the existing  
18 wholesaler's territory to at least the same  
19 extent that the existing wholesaler distributed  
20 the low-point beer immediately before the  
21 successor manufacturer acquired rights to the  
22 low-point beer, and

23 (2) the existing wholesaler is not entitled to the  
24 settlement or arbitration award.

1       ~~F.~~ E. 1. Any wholesaler or manufacturer who is aggrieved by a  
2 violation of any provision of subsections B and D of this section  
3 shall be entitled to recovery of damages caused by the violation.  
4 Except for a dispute arising under subsection E of this section,  
5 damages shall be sought in a civil action in any court of competent  
6 jurisdiction.

7       2. Any dispute arising under subsections B and D of this  
8 section may also be settled by such dispute resolution procedures as  
9 may be provided by a written agreement between the parties.

10       ~~G.~~ F. Nothing in this section shall be construed to limit or  
11 prohibit good-faith settlements voluntarily entered into by the  
12 parties.

13       ~~H.~~ G. Nothing in this section shall be construed to give an  
14 existing wholesaler or a successor wholesaler any right to  
15 compensation if an agreement with the existing wholesaler or  
16 successor wholesaler is terminated by a successor manufacturer  
17 pursuant to subsections B, C and D of this section.

18       ~~I.~~ H. No manufacturer shall require any wholesaler to waive  
19 compliance with any provision of this section.

20       ~~J.~~ I. This section shall apply to any agreement entered into,  
21 and any renewals, extensions, amendments, or conduct constituting a  
22 modification of an agreement, by a manufacturer on or after the  
23 effective date of this act.

24       SECTION 3. This act shall become effective November 1, 2015.

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