

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 688 By: Jolley of the Senate  
3 and  
4 O'Donnell of the House  
5  
6

7 [ low-point beer - duties of manufacturer and  
8 termination of agreement with wholesaler - certain  
9 provisions for brand extensions - compensation -  
10 inducements for distribution sales agreement -  
11 effective date ]

12 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
13 entire bill and insert

14 "[ low-point beer - duties of manufacturer and  
15 termination of agreement with wholesaler - certain  
16 provisions for brand extensions - compensation -  
17 inducements for distribution sales agreement -  
18 effective date ]

19  
20  
21 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

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

24 Section 163.18B A. For purposes of this section:

1       1. "Brand" means any word, name, group of letters, symbol or  
2 combination thereof, that is adopted and used by a licensed  
3 manufacturer to identify a specific beer or low-point beer product  
4 and to distinguish that product from another beer or low-point beer  
5 product;

6       2. "Brand extension" means any brand that:

7           a. incorporates all or a substantial part of the unique  
8           features of a preexisting brand of the same licensed  
9           manufacturer, and

10          b. relies to a significant extent on the goodwill  
11          associated with that preexisting brand; and

12       3. "Beer" means beer defined in paragraph 5 or 15 of Section  
13 506 of this title which has not previously been sold in a licensed  
14 wholesaler's exclusive territory.

15       B. Every manufacturer of low-point beer licensed by the  
16 Oklahoma Tax Commission authorizing the licensee to sell its low-  
17 point beer in this state shall:

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

1 assigns a brand extension of a low-point beer must assign the low-  
2 point beer brand extension to the licensed wholesaler to whom the  
3 licensed manufacturer granted the exclusive sales territory to the  
4 brand from which the brand extension resulted;

5 2. Sell its registered and approved designated brands only to a  
6 licensed wholesaler with whom that licensed manufacturer has an  
7 agreement designating the sales territory of the licensed wholesaler  
8 and the designated brands to be sold by the licensed wholesaler;

9 3. Authorize only one licensed wholesaler for each designated  
10 sales territory. Such licensed wholesaler shall be the only  
11 licensed wholesaler for the designated brands of the authorizing  
12 licensed manufacturer within that designated sales territory; and

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

15 C. Any and all licensed wholesalers possessing the rights to  
16 distribute a low-point beer brand in a specific territory prior to  
17 the introduction of that low-point beer's correlating beer brand in  
18 that specific territory shall retain the right to distribute the  
19 low-point beer.

20 D. Should a change in law in this state concerning the  
21 distribution and sale of low-point beer or the distribution and sale  
22 of beer materially impair the distribution rights of a licensed low-  
23 point beer wholesaler or result in a material reduction in sales or  
24 the elimination of a low-point beer in such licensed wholesaler's

1 specific territory, a manufacturer of beer shall assign the  
2 exclusive right to distribute a beer brand to the low-point  
3 distributor who has been assigned the exclusive distribution rights  
4 to the beer brand's correlating low-point beer. If the beer brand  
5 was being sold by a nonresident seller licensed under Section 524 of  
6 this title at the time of impairment, reduction in sales or  
7 elimination of the low-point beer, the licensed wholesaler must  
8 compensate the nonresident seller for the loss of the beer brand.  
9 Compensation for the purposes of this provision shall be the fair  
10 market value of the existing nonresident seller's business with  
11 respect to the beer within that specific territory. Fair market  
12 value shall be determined as set forth in paragraphs 3 and 4 of  
13 subsection E of Section 163.18E of this title.

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

16 Section 163.18E A. Nothing in this section shall apply to a  
17 manufacturer that produces less than ~~three hundred thousand~~  
18 ~~(300,000) gallons~~ twenty-five thousand (25,000) barrels of low-point  
19 beer per calendar year.

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

23 a. the manufacturer establishes good cause for such  
24 termination,

- 1           b.    the wholesaler receives written notification by  
2                   certified mail, return receipt requested, from the  
3                   manufacturer of the alleged noncompliance and is  
4                   afforded no less than sixty (60) days in which to cure  
5                   such noncompliance,
- 6           c.    the wholesaler fails to cure such noncompliance within  
7                   the allotted cure period, and
- 8           d.    the manufacturer provides written notice by certified  
9                   mail, return receipt requested, to the wholesaler of  
10                  such continued noncompliance. The notification shall  
11                  contain a statement of the intention of the  
12                  manufacturer to terminate or not renew the agreement,  
13                  the reasons for termination or nonrenewal and the date  
14                  the termination or nonrenewal shall take effect.

15           2.    If a wholesaler cures an alleged noncompliance within the  
16                  cure period provided in subparagraph b of paragraph 1 of this  
17                  subsection, any notice of termination from a manufacturer to a  
18                  wholesaler shall be null and void.

19           C.    A manufacturer may immediately terminate an agreement with a  
20                  wholesaler, effective upon furnishing written notification to the  
21                  wholesaler by certified mail, return receipt requested, for any of  
22                  the following reasons:  
23  
24

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

4        2. The assignment or attempted assignment by the wholesaler for  
5 the benefit of creditors, the institution of proceedings in  
6 bankruptcy by or against the wholesaler, the dissolution or  
7 liquidation of the wholesaler or the insolvency of the wholesaler;

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

12       4. Failure of a wholesaler to sell his or her ownership  
13 interest in the distribution rights to the manufacturer's low-point  
14 beer within one hundred twenty (120) days after such a wholesaler  
15 has been convicted of a felony that, in the manufacturer's sole  
16 judgment, adversely affects the goodwill of the wholesaler or  
17 manufacturer;

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

23       6. Any attempted transfer of ownership of the wholesaler, stock  
24 of the wholesaler or stock of any parent corporation of the

1 wholesaler, or any change in the beneficial ownership or control of  
2 any entity, without obtaining the prior written approval of the  
3 manufacturer, which approval shall not be unreasonably withheld,  
4 except as may otherwise be permitted pursuant to a written agreement  
5 between the parties;

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

10 8. The wholesaler ceases to conduct business for five (5)  
11 consecutive business days, unless conducting the business is  
12 prevented or rendered impractical due to events beyond the  
13 wholesaler's reasonable control as a result of an act of God, an  
14 insured casualty, war, or a condition of national, state or local  
15 emergency; or

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

19 D. The manufacturer shall have the right to terminate an  
20 agreement with a wholesaler at any time by giving the wholesaler at  
21 least ninety (90) days' written notice by certified mail, return  
22 receipt requested; provided, that the manufacturer shall give a  
23 similar notice to all other wholesalers in all other states who have  
24 entered into the same distribution agreement with the manufacturer.

1 E. If a particular brand of low-point beer is transferred by  
2 purchase or otherwise from a manufacturer to a successor  
3 manufacturer, the following shall occur:

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

18 2. If the successor manufacturer decides to terminate its  
19 agreement with the existing wholesaler for purposes of transfer, the  
20 successor manufacturer shall notify the existing wholesaler in  
21 writing of the successor manufacturer's intent not to appoint the  
22 existing wholesaler for all or part of the existing wholesaler's  
23 territory for the low-point beer. The successor manufacturer shall  
24 mail the notice of termination by certified mail, return receipt



1 requested, to the existing wholesaler. The successor manufacturer  
2 shall include in the notice the names, addresses and telephone  
3 numbers of the successor wholesaler or wholesalers;

4 3. a. The successor wholesaler shall negotiate with the  
5 existing wholesaler to determine the fair market value  
6 of the existing wholesaler's right to distribute the  
7 low-point beer in the existing wholesaler's territory.  
8 The successor wholesaler and the existing wholesaler  
9 shall negotiate the fair market value in good faith.

10 b. The existing wholesaler shall continue to distribute  
11 the low-point beer in good faith until payment of the  
12 compensation agreed to under subparagraph a of this  
13 paragraph, or awarded under paragraph 4 of this  
14 subsection, is received; and

15 4. a. If the successor wholesaler and the existing  
16 wholesaler fail to reach a written agreement on the  
17 fair market value within thirty (30) days after the  
18 existing wholesaler receives the notice required  
19 pursuant to paragraph 2 of this subsection, the  
20 successor wholesaler or the existing wholesaler shall  
21 send a written notice to the other party requesting  
22 arbitration pursuant to the Uniform Arbitration Act,  
23 Part 2 of Article 22 of Title 13, C.R.S. Arbitration  
24 shall be held for the purpose of determining the fair

1 market value of the existing wholesaler's right to  
2 distribute the low-point beer in the existing  
3 wholesaler's territory.

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

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

15 (1) is closest to the existing wholesaler, and

16 (2) has a population of more than twenty thousand  
17 (20,000) people.

18 d. Any arbitration held pursuant to this paragraph shall  
19 be conducted before one impartial arbitrator to be  
20 selected by the American Arbitration Association or  
21 its successor. The arbitration shall be conducted in  
22 accordance with the rules and procedures of the  
23 Uniform Arbitration Act, Part 2 of Article 22 of Title  
24 13, C.R.S.

1 e. An arbitrator's award in any arbitration held pursuant  
2 to this paragraph shall be monetary only and shall not  
3 enjoin or compel conduct. Any arbitration held  
4 pursuant to this paragraph shall be in lieu of all  
5 other remedies and procedures.

6 f. The cost of the arbitrator and any other direct costs  
7 of an arbitration held pursuant to this paragraph  
8 shall be equally divided by the parties engaged in the  
9 arbitration. All other costs shall be paid by the  
10 party incurring them.

11 g. The arbitrator in any arbitration held pursuant to  
12 this paragraph shall render a written decision not  
13 later than thirty (30) days after the conclusion of  
14 the arbitration, unless this time is extended by  
15 mutual agreement of the parties and the arbitrator.  
16 The decision of the arbitrator is final and binding on  
17 the parties. The arbitrator's award may be enforced  
18 by commencing a civil action in any court of competent  
19 jurisdiction. Under no circumstances may the parties  
20 appeal the decision of the arbitrator.

21 h. An existing wholesaler or successor wholesaler who  
22 fails to participate in the arbitration hearings in  
23 any arbitration held pursuant to this paragraph waives  
24 all rights the existing wholesaler or successor

1 wholesaler would have had in the arbitration and is  
2 considered to have consented to the determination of  
3 the arbitrator.

4 i. If the existing wholesaler does not receive payment  
5 from the successor wholesaler of the settlement or  
6 arbitration award required under paragraph 2 or 3 of  
7 this subsection within thirty (30) days after the date  
8 of the settlement or arbitration award:

9 (1) the existing wholesaler shall remain the  
10 wholesaler of the low-point beer in the existing  
11 wholesaler's territory to at least the same  
12 extent that the existing wholesaler distributed  
13 the low-point beer immediately before the  
14 successor manufacturer acquired rights to the  
15 low-point beer, and

16 (2) the existing wholesaler is not entitled to the  
17 settlement or arbitration award.

18 F. 1. Any wholesaler or manufacturer who is aggrieved by a  
19 violation of any provision of subsections B and D of this section  
20 shall be entitled to recovery of damages caused by the violation.  
21 Except for a dispute arising under subsection E of this section,  
22 damages shall be sought in a civil action in any court of competent  
23 jurisdiction.

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

4           G. Nothing in this section shall be construed to limit or  
5 prohibit good-faith settlements voluntarily entered into by the  
6 parties.

7           H. Nothing in this section shall be construed to give an  
8 existing wholesaler or a successor wholesaler any right to  
9 compensation if an agreement with the existing wholesaler or  
10 successor wholesaler is terminated by a successor manufacturer  
11 pursuant to subsections B, C and D of this section.

12           I. No manufacturer shall require any wholesaler to waive  
13 compliance with any provision of this section.

14           J. This section shall apply to any agreement entered into, and  
15 any renewals, extensions, amendments, or conduct constituting a  
16 modification of an agreement, by a manufacturer on or after the  
17 effective date of this act.

18           SECTION 3. This act shall become effective November 1, 2015."  
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1 ENGROSSED SENATE  
2 BILL NO. 688

By: Jolley of the Senate

3 and

4 O'Donnell of the House

5  
6 [ low-point beer - duties of manufacturer and  
7 termination of agreement with wholesaler - certain  
8 provisions for brand extensions - compensation -  
9 inducements for distribution sales agreement -  
10 effective date ]

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

12 SECTION 4. AMENDATORY 37 O.S. 2011, Section 163.18B, is  
13 amended to read as follows:

14 Section 163.18B. A. For purposes of this section:

15 1. "Brand" means any word, name, group of letters, symbol or  
16 combination thereof, that is adopted and used by a licensed  
17 manufacturer to identify a specific beer or low-point beer product  
18 and to distinguish that product from another beer or low-point beer  
19 product;

20 2. "Brand extension" means any brand that:

21 a. incorporates all or a substantial part of the unique  
22 features of a preexisting brand of the same licensed  
23 manufacturer, and

1           b. relies to a significant extent on the goodwill  
2           associated with that preexisting brand.

3           3. "Beer" means beer defined in paragraph 5 or 15 of Section  
4 506 of this title which has not previously been sold in a licensed  
5 wholesaler's exclusive territory.

6           B. Every manufacturer of low-point beer licensed by the  
7 Oklahoma Tax Commission authorizing the licensee to sell its low-  
8 point beer in this state shall:

9           1. Enter into an agreement with a licensed wholesaler to sell  
10 the designated brands of the licensed manufacturer which designates  
11 the sales territory of that licensed wholesaler and the designated  
12 brands to be sold by the licensed wholesaler. All such agreements  
13 shall specifically authorize the sale of the designated brands by a  
14 licensed wholesaler within that sales territory. All such  
15 agreements shall further provide that the licensed manufacturer who  
16 assigns a brand extension of a low-point beer must assign the low-  
17 point beer brand extension to the licensed wholesaler to whom the  
18 licensed manufacturer granted the exclusive sales territory to the  
19 brand from which the brand extension resulted;

20           2. Sell its registered and approved designated brands only to a  
21 licensed wholesaler with whom that licensed manufacturer has an  
22 agreement designating the sales territory of the licensed wholesaler  
23 and the designated brands to be sold by the licensed wholesaler;  
24



1 3. Authorize only one licensed wholesaler for each designated  
2 sales territory. Such licensed wholesaler shall be the only  
3 licensed wholesaler for the designated brands of the authorizing  
4 licensed manufacturer within that designated sales territory; and

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

7 C. Any and all licensed wholesalers possessing the rights to  
8 distribute a low-point beer brand in a specific territory prior to  
9 the introduction of that low-point beer's correlating beer brand in  
10 that specific territory shall retain the right to distribute the  
11 low-point beer.

12 D. Should a change in law in this state concerning the  
13 distribution and sale of low-point beer or the distribution and sale  
14 of beer materially impair the distribution rights of a licensed low-  
15 point beer wholesaler or result in a material reduction in sales or  
16 the elimination of a low-point beer in such licensed wholesaler's  
17 specific territory, a manufacturer of beer shall assign the  
18 exclusive right to distribute a beer brand to the low-point  
19 distributor who has been assigned the exclusive distribution rights  
20 to the beer brand's correlating low-point beer. If the beer brand  
21 was being sold by a nonresident seller licensed under Section 524 of  
22 this title at the time of impairment, reduction in sales or  
23 elimination of the low-point beer, the licensed wholesaler must  
24 compensate the nonresident seller for the loss of the beer brand.

1 Compensation for the purposes of this provision shall be the fair  
2 market value of the existing nonresident seller's business with  
3 respect to the beer within that specific territory. Fair market  
4 value shall be determined as set forth in paragraphs 3 and 4 of  
5 subsection E of Section 163.18E of this title.

6 SECTION 5. AMENDATORY 37 O.S. 2011, Section 163.18E, is  
7 amended to read as follows:

8 Section 163.18E. A. Nothing in this section shall apply to a  
9 manufacturer that produces less than ~~three hundred thousand~~  
10 ~~(300,000) gallons~~ ten thousand (10,000) barrels of low-point beer  
11 per calendar year.

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

- 15 a. the manufacturer establishes good cause for such  
16 termination,
- 17 b. the wholesaler receives written notification by  
18 certified mail, return receipt requested, from the  
19 manufacturer of the alleged noncompliance and is  
20 afforded no less than sixty (60) days in which to cure  
21 such noncompliance,
- 22 c. the wholesaler fails to cure such noncompliance within  
23 the allotted cure period, and
- 24

1           d.    the manufacturer provides written notice by certified  
2                mail, return receipt requested, to the wholesaler of  
3                such continued noncompliance.  The notification shall  
4                contain a statement of the intention of the  
5                manufacturer to terminate or not renew the agreement,  
6                the reasons for termination or nonrenewal and the date  
7                the termination or nonrenewal shall take effect.

8           2.  If a wholesaler cures an alleged noncompliance within the  
9           cure period provided in subparagraph b of paragraph 1 of this  
10           subsection, any notice of termination from a manufacturer to a  
11           wholesaler shall be null and void.

12           C.  A manufacturer may immediately terminate an agreement with a  
13           wholesaler, effective upon furnishing written notification to the  
14           wholesaler by certified mail, return receipt requested, for any of  
15           the following reasons:

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

19           2.  The assignment or attempted assignment by the wholesaler for  
20           the benefit of creditors, the institution of proceedings in  
21           bankruptcy by or against the wholesaler, the dissolution or  
22           liquidation of the wholesaler or the insolvency of the wholesaler;

23           3.  The revocation or suspension of, or the failure to renew for  
24           a period of more than fourteen (14) days, a wholesaler's state,

1 local or federal license or permit to sell low-point beer in this  
2 state;

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

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

14 6. Any attempted transfer of ownership of the wholesaler, stock  
15 of the wholesaler or stock of any parent corporation of the  
16 wholesaler, or any change in the beneficial ownership or control of  
17 any entity, without obtaining the prior written approval of the  
18 manufacturer, which approval shall not be unreasonably withheld,  
19 except as may otherwise be permitted pursuant to a written agreement  
20 between the parties;

21 7. Fraudulent conduct in the wholesaler's dealings with the  
22 manufacturer or its low-point beer, including the intentional sale  
23 of low-point beer outside the manufacturer's established quality  
24 standards;

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

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

10 D. The manufacturer shall have the right to terminate an  
11 agreement with a wholesaler at any time by giving the wholesaler at  
12 least ninety (90) days' written notice by certified mail, return  
13 receipt requested; provided, that the manufacturer shall give a  
14 similar notice to all other wholesalers in all other states who have  
15 entered into the same distribution agreement with the manufacturer.

16 E. If a particular brand of low-point beer is transferred by  
17 purchase or otherwise from a manufacturer to a successor  
18 manufacturer, the following shall occur:

19 1. The successor manufacturer shall become obligated to all of  
20 the terms and conditions of the agreement in effect on the date of  
21 succession. This subsection applies regardless of the character or  
22 form of the succession. A successor manufacturer has the right to  
23 contractually require its wholesaler to comply with operational  
24 standards of performance, if the standards are uniformly established

1 for all of the successor manufacturer's wholesalers. A successor  
2 manufacturer may, upon written notice, terminate its agreement, in  
3 whole or in part, with a wholesaler of the manufacturer it  
4 succeeded, for the purpose of transferring the distribution rights  
5 in the wholesaler's territory to a new wholesaler, provided that the  
6 successor wholesaler first pays to the existing wholesaler the fair  
7 market value of the existing wholesaler's business with respect to  
8 the terminated brand or brands;

9       2. If the successor manufacturer decides to terminate its  
10 agreement with the existing wholesaler for purposes of transfer, the  
11 successor manufacturer shall notify the existing wholesaler in  
12 writing of the successor manufacturer's intent not to appoint the  
13 existing wholesaler for all or part of the existing wholesaler's  
14 territory for the low-point beer. The successor manufacturer shall  
15 mail the notice of termination by certified mail, return receipt  
16 requested, to the existing wholesaler. The successor manufacturer  
17 shall include in the notice the names, addresses and telephone  
18 numbers of the successor wholesaler or wholesalers;

19       3. a. The successor wholesaler shall negotiate with the  
20 existing wholesaler to determine the fair market value  
21 of the existing wholesaler's right to distribute the  
22 low-point beer in the existing wholesaler's territory.  
23 The successor wholesaler and the existing wholesaler  
24 shall negotiate the fair market value in good faith.

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

6           4.   a.   If the successor wholesaler and the existing  
7                wholesaler fail to reach a written agreement on the  
8                fair market value within thirty (30) days after the  
9                existing wholesaler receives the notice required  
10              pursuant to paragraph 2 of this subsection, the  
11              successor wholesaler or the existing wholesaler shall  
12              send a written notice to the other party requesting  
13              arbitration pursuant to the Uniform Arbitration Act,  
14              Part 2 of Article 22 of Title 13, C.R.S. Arbitration  
15              shall be held for the purpose of determining the fair  
16              market value of the existing wholesaler's right to  
17              distribute the low-point beer in the existing  
18              wholesaler's territory.

19           b.    Notice of intent to arbitrate shall be sent, as  
20                provided in subparagraph a of this paragraph, not  
21                later than forty (40) days after the existing  
22                wholesaler receives the notice required pursuant to  
23                paragraph 2 of this subsection. The arbitration  
24                proceeding shall conclude not later than sixty (60)

1 days after the date the notice of intent to arbitrate  
2 is mailed to a party, unless this time is extended by  
3 mutual agreement of the parties and the arbitrator.

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

6 (1) is closest to the existing wholesaler, and

7 (2) has a population of more than twenty thousand  
8 (20,000) people.

9 d. Any arbitration held pursuant to this paragraph shall  
10 be conducted before one impartial arbitrator to be  
11 selected by the American Arbitration Association or  
12 its successor. The arbitration shall be conducted in  
13 accordance with the rules and procedures of the  
14 Uniform Arbitration Act, Part 2 of Article 22 of Title  
15 13, C.R.S.

16 e. An arbitrator's award in any arbitration held pursuant  
17 to this paragraph shall be monetary only and shall not  
18 enjoin or compel conduct. Any arbitration held  
19 pursuant to this paragraph shall be in lieu of all  
20 other remedies and procedures.

21 f. The cost of the arbitrator and any other direct costs  
22 of an arbitration held pursuant to this paragraph  
23 shall be equally divided by the parties engaged in the  
24



1 arbitration. All other costs shall be paid by the  
2 party incurring them.

3 g. The arbitrator in any arbitration held pursuant to  
4 this paragraph shall render a written decision not  
5 later than thirty (30) days after the conclusion of  
6 the arbitration, unless this time is extended by  
7 mutual agreement of the parties and the arbitrator.  
8 The decision of the arbitrator is final and binding on  
9 the parties. The arbitrator's award may be enforced  
10 by commencing a civil action in any court of competent  
11 jurisdiction. Under no circumstances may the parties  
12 appeal the decision of the arbitrator.

13 h. An existing wholesaler or successor wholesaler who  
14 fails to participate in the arbitration hearings in  
15 any arbitration held pursuant to this paragraph waives  
16 all rights the existing wholesaler or successor  
17 wholesaler would have had in the arbitration and is  
18 considered to have consented to the determination of  
19 the arbitrator.

20 i. If the existing wholesaler does not receive payment  
21 from the successor wholesaler of the settlement or  
22 arbitration award required under paragraph 2 or 3 of  
23 this subsection within thirty (30) days after the date  
24 of the settlement or arbitration award:

1 (1) the existing wholesaler shall remain the  
2 wholesaler of the low-point beer in the existing  
3 wholesaler's territory to at least the same  
4 extent that the existing wholesaler distributed  
5 the low-point beer immediately before the  
6 successor manufacturer acquired rights to the  
7 low-point beer, and

8 (2) the existing wholesaler is not entitled to the  
9 settlement or arbitration award.

10 F. 1. Any wholesaler or manufacturer who is aggrieved by a  
11 violation of any provision of subsections B and D of this section  
12 shall be entitled to recovery of damages caused by the violation.  
13 Except for a dispute arising under subsection E of this section,  
14 damages shall be sought in a civil action in any court of competent  
15 jurisdiction.

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

19 G. Nothing in this section shall be construed to limit or  
20 prohibit good-faith settlements voluntarily entered into by the  
21 parties.

22 H. Nothing in this section shall be construed to give an  
23 existing wholesaler or a successor wholesaler any right to  
24 compensation if an agreement with the existing wholesaler or

1 successor wholesaler is terminated by a successor manufacturer  
2 pursuant to subsections B, C and D of this section.

3 I. No manufacturer shall require any wholesaler to waive  
4 compliance with any provision of this section.

5 J. No manufacturer shall charge or accept any money, property,  
6 gratuity, discount, rebate, free goods, allowances or other  
7 inducement from a wholesaler in exchange for entering into a  
8 distribution sales agreement with a wholesaler.

9 ~~J. This~~ K. On and after the effective date of this act, this  
10 section shall apply to any agreement entered into, and any renewals,  
11 extensions, amendments, or conduct constituting a modification of an  
12 agreement, by a manufacturer ~~on or after the effective date of this~~  
13 ~~act.~~

14 SECTION 6. This act shall become effective November 1, 2015.

15 Passed the Senate the 10th day of March, 2015.

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Presiding Officer of the Senate

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19 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

20 2015.

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Presiding Officer of the House  
of Representatives

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