

1 ENGROSSED SENATE
2 BILL NO. 1395

By: Bice of the Senate

3 and

4 Mulready of the House

5
6 An Act relating to alcoholic beverages; amending
7 Section 78, Chapter 366, O.S.L. 2016, as amended by
8 Section 14, Chapter 364, O.S.L. 2017 (37A O.S. Supp.
9 2017, Section 3-108), which relates to the Alcoholic
10 Beverage Control Act; providing for disposition of
11 certain inventory; and providing an effective date.

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

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

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

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

22 1. Enter into a distributor agreement with a licensed
23 distributor, as defined herein, to sell the designated brands,
24 including brand extensions, of the brewer or cider manufacturer.

The agreement shall designate the sales territory of that licensed

1 distributor and the designated brands to be sold by the licensed
2 distributor. All such distributor agreements shall specifically
3 authorize this sale of the designated brands by a licensed
4 distributor within that sales territory. All such distributor
5 agreements shall further provide that the licensed manufacturer who
6 desires to sell a brand extension of a low-point beer in Oklahoma
7 must assign the low-point beer brand extension to the licensed
8 distributor to whom the licensed manufacturer granted the exclusive
9 sales territory to the low-point beer brand from which the brand
10 extension resulted;

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

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

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

23 C. Subject to the provisions of subsection D of this section,
24 any and all licensed distributors possessing the rights to

1 distribute a low-point beer brand in a specific territory prior to
2 the introduction of that low-point beer's correlating beer brand
3 extension in that specific territory shall retain the right to
4 distribute the low-point beer from which the brand extension
5 resulted.

6 D. 1. No later than August 2, 2018, a brewer shall assign the
7 exclusive right to distribute a beer brand, including brand
8 extensions thereof, to the low-point beer distributor who was, prior
9 to ~~the effective date of this act~~ October 1, 2018, assigned the
10 exclusive distribution rights to the low-point beer from which the
11 brand extension arose without charge or payment of compensation,
12 unless the low-point beer distributor is, on ~~the effective date of~~
13 ~~this act~~ October 1, 2018, a brewer of beer or low-point beer and has
14 therefore been distributing low-point beer pursuant to a license to
15 so distribute, subject to the provisions of subsection E of this
16 section. This subsection shall not apply to a small brewer as
17 defined in Section 1-103 of this title.

18 2. With respect to brand extensions which arise after October
19 1, 2018, the brewer or cider manufacturer shall assign the exclusive
20 right to distribute the brand extension to the distributor who has
21 been assigned the exclusive distribution rights to the beer or cider
22 from which the brand extension arose, without charge or payment of
23 compensation.

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

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

23 5. Compensation for the purposes of this provision shall be the
24 fair market value of the party losing its distribution rights with

1 respect to the beer within that specific territory. Fair market
2 value shall be determined as set forth in Section 3-111 of this
3 title and shall take into account all aspects of brand valuation,
4 including but not limited to:

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

14 E. If a brewer, whether directly or through an affiliate,
15 maintained one or more licenses to distribute low-point beer in this
16 state prior to ~~the effective date of this act~~ October 1, 2018, then
17 up to two of the brewer's low-point beer distribution licenses shall
18 automatically convert to beer distribution licenses ~~upon the~~
19 ~~effective date of this act~~ on October 1, 2018, and such brewer shall
20 be permitted to continue to distribute beer in two territories
21 within which it currently distributes without the appointment of a
22 distributor for such period of time as determined by the Legislature
23 and consistent with the Constitution of the State of Oklahoma;
24 provided however, it shall not be permitted to distribute beer

1 outside of the territory unless it enters into a distributor
2 agreement with an independent licensed distributor as provided in
3 paragraph 1 of subsection B of this section. This section shall not
4 apply to small brewers that have elected to self-distribute.

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

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

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

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Presiding Officer of the Senate

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18 Passed the House of Representatives the ____ day of _____,

19 2018.

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Presiding Officer of the House
of Representatives

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