

1 ENGROSSED HOUSE
2 BILL NO. 1967

By: O'Donnell of the House

3 and

4 Jolley of the Senate

5
6
7 [low-point beer - agreements with wholesaler -
8 effective date]
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

3 3. "Beer" as used in this section means beer as defined in
4 paragraph 5 or 15 of Section 506 of this title, which has not
5 previously been sold in a licensed 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;

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 said 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 such beer within that specific territory. Fair market
4 value shall be determined as set forth in paragraphs 3 and 4 of
5 subsection D of Section 163.18E of this title.

6 E. No manufacturer shall accept payment in exchange for an
7 agreement setting forth territorial rights. Nothing in this section
8 shall interfere with the rights of a manufacturer to enter into
9 contractual agreements with a wholesaler, and accept payment from a
10 wholesaler arising from such agreements, that could be construed as
11 governing ordinary business transactions, including, but not limited
12 to, agreements concerning allowances, rebates, discounts, refunds,
13 services, capacity, product orders, litigation settlements,
14 advertising funds, promotional funds, or sports marketing funds.

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

17 Section 163.18E A. Nothing in this section shall apply to a
18 manufacturer that produces less than ~~three hundred thousand~~
19 ~~(300,000) gallons~~ ten thousand (10,000) barrels of low-point beer
20 per calendar year.

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

- a. the manufacturer establishes good cause for such termination,
- b. the wholesaler receives written notification by certified mail, return receipt requested, from the manufacturer of the alleged noncompliance and is afforded no less than sixty (60) days in which to cure such noncompliance,
- c. the wholesaler fails to cure such noncompliance within the allotted cure period, and
- d. the manufacturer provides written notice by certified mail, return receipt requested, to the wholesaler of such continued noncompliance. The notification shall contain a statement of the intention of the manufacturer to terminate or not renew the agreement, the reasons for termination or nonrenewal and the date the termination or nonrenewal shall take effect.

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

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

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

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

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

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

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

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

19 SECTION 3. This act shall become effective November 1, 2015.
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1 Passed the House of Representatives the 10th day of March, 2015.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2015.

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9 Presiding Officer of the Senate