

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1967

By: O'Donnell

7 COMMITTEE SUBSTITUTE

8 An Act relating to low-point beer; amending 37 O.S.  
9 2011, Sections 163.18B and 163.18E, which relate to  
10 duties of manufacturer and termination of agreement  
11 with wholesaler; defining terms; requiring certain  
12 agreements to have certain provisions for certain  
13 brand extensions; allowing retention of certain  
14 rights to distribute; requiring certain assignments  
15 in certain situations; providing for compensation to  
16 certain sellers under certain condition; prohibiting  
17 acceptance of payments for agreements relating to  
18 territorial rights; establishing calculation of such  
19 compensation; modifying beer production limit for  
20 certain manufacturer exemption; modifying and  
21 clarifying references; prohibiting the withholding of  
22 certain written approval; modifying allowed instances  
23 when certain agreement terminations are permitted;  
24 and providing an effective date.

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

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

Section 163.18B A. For purposes of this section:

1. "Brand" means any word, name, group of letters, symbol, or  
combination thereof, that is adopted and used by a licensed

1 manufacturer to identify a specific beer or low-point beer product,  
2 and to distinguish that product from another beer or low-point beer  
3 product;

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

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

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

10 3. "Beer" as used in this section means beer as defined in  
11 paragraph 5 or 15 of Section 506 of this title, which has not  
12 previously been sold in a licensed wholesaler's exclusive territory.

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

16 1. Enter into an agreement with a licensed wholesaler to sell  
17 the designated brands of the licensed manufacturer which designates  
18 the sales territory of that licensed wholesaler and the designated  
19 brands to be sold by the licensed wholesaler. All such agreements  
20 shall specifically authorize the sale of the designated brands by a  
21 licensed wholesaler within that sales territory. All such  
22 agreements shall further provide that the licensed manufacturer who  
23 assigns a brand extension of a low-point beer must assign the low-  
24 point beer brand extension to the licensed wholesaler to whom the

1 licensed manufacturer granted the exclusive sales territory to the  
2 brand from which the brand extension resulted;

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

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

11 4. Designate who is responsible for the distribution of its  
12 designated brands.

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

18 D. Should a change in law in this state concerning the  
19 distribution and sale of low-point beer or the distribution and sale  
20 of beer materially impair the distribution rights of a licensed low-  
21 point beer wholesaler or result in a material reduction in sales or  
22 the elimination of a low-point beer in such licensed wholesaler's  
23 specific territory, a manufacturer of beer shall assign the  
24 exclusive right to distribute a beer brand to the low-point

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

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

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

23 Section 163.18E A. Nothing in this section shall apply to a  
24 manufacturer that produces less than ~~three hundred thousand~~

1 ~~(300,000) gallons~~ ten thousand (10,000) barrels of low-point beer  
2 per calendar year.

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

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

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

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

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

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

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

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

24

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, which approval shall not be unreasonably withheld,  
11 except as may otherwise be permitted pursuant to a written agreement  
12 between the parties;

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

17           8. The wholesaler ceases to conduct business for five (5)  
18 consecutive business days, unless conducting the business is  
19 prevented or rendered impractical due to events beyond the  
20 wholesaler's reasonable control as a result of an act of God, an  
21 insured casualty, war, or a condition of national, state or local  
22 emergency; or  
23  
24

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

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

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

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



1 market value of the existing wholesaler's business with respect to  
2 the terminated brand or brands;

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

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

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

24

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

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

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

1 (1) is closest to the existing wholesaler, and  
2 (2) has a population of more than twenty thousand  
3 (20,000) people.

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

11 e. An arbitrator's award in any arbitration held pursuant  
12 to this paragraph shall be monetary only and shall not  
13 enjoin or compel conduct. Any arbitration held  
14 pursuant to this paragraph shall be in lieu of all  
15 other remedies and procedures.

16 f. The cost of the arbitrator and any other direct costs  
17 of an arbitration held pursuant to this paragraph  
18 shall be equally divided by the parties engaged in the  
19 arbitration. All other costs shall be paid by the  
20 party incurring them.

21 g. The arbitrator in any arbitration held pursuant to  
22 this paragraph shall render a written decision not  
23 later than thirty (30) days after the conclusion of  
24 the arbitration, unless this time is extended by

1 mutual agreement of the parties and the arbitrator.  
2 The decision of the arbitrator is final and binding on  
3 the parties. The arbitrator's award may be enforced  
4 by commencing a civil action in any court of competent  
5 jurisdiction. Under no circumstances may the parties  
6 appeal the decision of the arbitrator.

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

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

19 (1) the existing wholesaler shall remain the  
20 wholesaler of the low-point beer in the existing  
21 wholesaler's territory to at least the same  
22 extent that the existing wholesaler distributed  
23 the low-point beer immediately before the  
24

1                    successor manufacturer acquired rights to the  
2                    low-point beer, and

3                    (2) the existing wholesaler is not entitled to the  
4                    settlement or arbitration award.

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

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

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

18        ~~H.~~ G. Nothing in this section shall be construed to give an  
19 existing wholesaler or a successor wholesaler any right to  
20 compensation if an agreement with the existing wholesaler or  
21 successor wholesaler is terminated by a successor manufacturer  
22 pursuant to subsections B, C ~~and D~~ of this section.

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

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

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

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7        55-1-7001            JM            02/24/15

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