

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1967

By: O'Donnell

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5  
6 AS INTRODUCED

7 An Act relating to low-point beer; amending 37 O.S.  
8 2011, Section 163.18E, which relates to the Low-Point  
9 Beer Distribution Act; eliminating exemption;  
10 updating references; and providing an effective date.

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

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

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

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

21 a. the manufacturer establishes good cause for such  
22 termination,

23 b. the wholesaler receives written notification by  
24 certified mail, return receipt requested, from the

1 manufacturer of the alleged noncompliance and is  
2 afforded no less than sixty (60) days in which to cure  
3 such noncompliance,

4 c. the wholesaler fails to cure such noncompliance within  
5 the allotted cure period, and

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

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

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

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

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

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

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

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

20           6. Any attempted transfer of ownership of the wholesaler, stock  
21 of the wholesaler or stock of any parent corporation of the  
22 wholesaler, or any change in the beneficial ownership or control of  
23 any entity, without obtaining the prior written approval of the  
24

1 manufacturer, except as may otherwise be permitted pursuant to a  
2 written agreement between the parties;

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

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

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

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

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

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

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

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

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

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

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

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

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

13           (2) has a population of more than twenty thousand  
14           (20,000) people.

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

22          e. An arbitrator's award in any arbitration held pursuant  
23          to this paragraph shall be monetary only and shall not  
24          enjoin or compel conduct. Any arbitration held

1           pursuant to this paragraph shall be in lieu of all  
2           other remedies and procedures.

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

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

18          h.    An existing wholesaler or successor wholesaler who  
19          fails to participate in the arbitration hearings in  
20          any arbitration held pursuant to this paragraph waives  
21          all rights the existing wholesaler or successor  
22          wholesaler would have had in the arbitration and is  
23          considered to have consented to the determination of  
24          the arbitrator.



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

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

13 (2) the existing wholesaler is not entitled to the  
14 settlement or arbitration award.

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

21 2. Any dispute arising under subsections ~~B~~ A and ~~D~~ C of this  
22 section may also be settled by such dispute resolution procedures as  
23 may be provided by a written agreement between the parties.

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

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

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

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

15       SECTION 2. This act shall become effective November 1, 2015.

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17       55-1-6593       JM       01/22/15

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