

ENROLLED SENATE
BILL NO. 764

BY: SMITH of the SENATE

and

STEIDLEY of the HOUSE

AN ACT RELATING TO COURT CLERK FEES; AMENDING 12 O.S. 1991, SECTIONS 66 AND 1761, WHICH RELATE TO CERTAIN ACTIONS BY THE STATE AND TO SMALL CLAIMS ACTIONS, 19 O.S. 1991, SECTION 138.5, WHICH RELATES TO DUTIES OF THE COUNTY INDIGENT DEFENDER, SECTION 20 OF ENROLLED HOUSE BILL NO. 2065 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATES TO INDIGENT REPRESENTATION, 22 O.S. 1991, SECTIONS 991c, AS AMENDED BY SECTION 2 OF ENROLLED SENATE BILL NO. 843 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, 1355.6, AS AMENDED BY SECTION 6 OF ENROLLED HOUSE BILL NO. 2065 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, 1355.8, AS AMENDED BY SECTION 8 OF ENROLLED HOUSE BILL NO. 2065 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, 1355.13, AS AMENDED BY SECTION 10 OF ENROLLED HOUSE BILL NO. 2065 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, AND 1362, AS AMENDED BY SECTION 15 OF ENROLLED HOUSE BILL NO. 2065 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATE TO DEFERRED JUDGMENT PROCEDURE AND TO THE INDIGENT DEFENSE SYSTEM, 28 O.S. 1991, SECTIONS 151 AND 153, AS AMENDED BY SECTION 27 OF ENROLLED HOUSE BILL NO. 2065 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATE TO FEE SCHEDULES AND COURT COSTS, AND 37 O.S. 1991, SECTIONS 163.11 AND 521, AS AMENDED BY SECTION 1 OF ENROLLED HOUSE BILL NO. 1803 OF THE 2ND SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATE TO RETAIL PERMITS AND LIQUOR LICENSES; MODIFYING LANGUAGE; REQUIRING COURT TO DIRECT PAYMENT OF CERTAIN FEES; MODIFYING CERTAIN AMOUNT AND CERTAIN TIME LIMIT FOR REQUESTING JURY TRIAL; PROVIDING PROCEDURES FOR APPLICATION FOR REPRESENTATION; REQUIRING APPLICATION FEE; PROVIDING FOR REPRESENTATION OF DEFENDANT IN CERTAIN CIRCUMSTANCES; PROVIDING PROCEDURE TO EXPUNGE DEFENDANT'S CRIMINAL RECORD; REQUIRING CERTAIN REFERENCES BE DELETED FROM DOCKET SHEET; SPECIFYING ACTION TO EXPUNGE CERTAIN INFORMATION FROM PUBLIC INDEX; REQUIRING COURT CLERK TO KEEP CERTAIN INDEX OF CERTAIN INFORMATION; RESTRICTING RELEASE OF CONFIDENTIAL INFORMATION; PROVIDING EXCEPTION; AUTHORIZING OTHER ALTERNATIVES TO EXPUNGE CERTAIN RECORDS BY QUALIFIED DEFENDANTS; PROVIDING EXPUNGEMENT PROCEDURE TO BE AVAILABLE RETROACTIVELY UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR DISPOSITION

OF FEES; CLARIFYING COMPENSATION AMOUNTS;
REQUIRING REPRESENTATION IN CERTAIN CASES;
REQUIRING CERTAIN CONSIDERATION OF ATTORNEY BIDS
FOR SYSTEM CONTRACTS; SPECIFYING CERTAIN PERSON
TO RECEIVE CERTAIN INFORMATION; PROVIDING FOR
PAYMENT OF CERTAIN FEES BY CREDIT OR CHARGE
CARD; DELETING CERTAIN NOTICE REQUIREMENT;
DELETING CERTAIN LICENSE REQUIREMENT; PROVIDING
AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 66, is amended to read as follows:

Section 66. Whenever an action is filed in any of the courts in ~~the State of Oklahoma~~ this state by the State of Oklahoma, or by direction of any department of ~~the State of Oklahoma~~ the state, no bond, including cost, replevin, attachment, garnishment, redelivery, injunction bonds, appeal bonds or other obligations of security shall be required from the ~~State of Oklahoma~~ state or from any party acting under the direction ~~aforsaid~~ of the state, either to prosecute ~~said suit~~, answer or appeal ~~same~~ the action. In case of an adverse decision, such costs as by law are taxable against the ~~State of Oklahoma~~ state, or against the party acting by its direction, ~~as aforsaid~~, shall be paid out of the contingent fund of the department under whose direction the proceedings were instituted; provided, that the court shall direct the nonprevailing party to pay the filing fee and service fee in the final order of the court.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1761, is amended to read as follows:

Section 1761. Actions under the small claims procedure shall be tried to the court without a jury, unless the amount of the claim, counterclaim, or setoff exceeds One Thousand Five Hundred Dollars (\$1,500.00). ~~Provided, however; provided,~~ if either party wishes a reporter or if either party to an action in which the claim, counterclaim, or setoff ~~does not exceed~~ exceeds One Thousand Five Hundred Dollars (\$1,500.00) wishes a jury, he must notify the clerk of the court in writing at least ~~forty-eight (48) hours~~ two (2) working days before the time date set for the defendant's appearance and must deposit Fifty Dollars (\$50.00) with said notice with the clerk ~~Fifty Dollars (\$50.00)~~. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.

SECTION 3. AMENDATORY 19 O.S. 1991, Section 138.5, is amended to read as follows:

Section 138.5 A. It shall be the duty of the office of the county indigent defender to represent as counsel anyone who appears for arraignment without aid of counsel, and who has been informed by the judge that it is his right to have counsel, and who desires counsel, but is unable to employ such aid; and upon order of a district judge of such county he shall investigate any matter pending before said judge and report to him in the manner prescribed by said judge.

B. When a defendant or, if applicable, his parent or legal guardian requests representation by the county indigent defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the defendant has been released on bond. In addition, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in this state, and the applicant declares that he or she does not have the means to employ counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the Indigent Defense System based on said application, the court shall advise the defendant or, if applicable, his parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the county indigent defender.

C. If the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond, other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

SECTION 4. AMENDATORY Section 20 of Enrolled House Bill No. 2065 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 20. In those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, if the court determines that a conflict of interest exists between a defendant and the county indigent defender, the case may be reassigned by the court to another county indigent defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments. In addition, in every case where the defendant is subject to the death penalty and a conflict of interest exists between the defendant and the county indigent defender, the court may appoint the Indigent Defense System to represent the defendant.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 991c, as amended by Section 2 of Enrolled Senate Bill No. 843 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 991c. A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation under the supervision of the State Department of Corrections upon the conditions of probation prescribed by the court. The court shall first consider restitution, administered in accordance with the provisions pertaining thereto, among the various conditions of probation it may prescribe. The court may also consider ordering the defendant to engage in a term of community service without compensation, according to a schedule consistent

with the employment and family responsibilities of the defendant. Further, the court may order the defendant confined to the county jail for a period not to exceed ninety (90) days to be served in conjunction with probation. Further, the court may order the defendant to pay a sum into the court fund not to exceed the amount of fine authorized for the offense alleged against the defendant or authorized under Section 9 of Title 21 of the Oklahoma Statutes and an amount for reasonable attorney fee, to be paid into the court fund, if a court-appointed attorney has been provided to defendant. Further, the court may, in the case of a person before the court for the offense of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol and another intoxicating substance, before the court for the offense of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person to participate in one or both of the following:

1. An alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes; and

2. A victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the victims impact panel program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

B. Upon completion of the probation term, which probation term under this procedure shall not exceed five (5) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere shall be expunged from the record and said charge shall be dismissed with prejudice to any further action. The procedure to expunge the defendant's record shall be as follows:

~~1. The order of probation and the expunge order on a verdict or plea of guilty or plea of nolo contendere shall be removed from the case file and retained, together with a copy of the docket sheet in a separate confidential file;~~

~~2. All references to the defendant's verdict or plea of guilty or nolo contendere name shall be deleted from the docket sheet, including but not limited to, minutes or notations to payment of fines, costs, victims compensation, restitution, community service or other requirements of probation until only the references to the dismissal of the case remain on the docket sheet;~~

2. The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration;

3. Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated pursuant to the provisions of this section;

4. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court;

~~4. The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration; and~~

5. Defendants qualifying under Section 18 of this title may petition the court to have the filing of the indictment and the dismissal expunged from the public index and docket sheet. This section shall not be mutually exclusive of Section 18 of this title.

C. The Upon order of the court, the provisions of subsection B of this section shall be retroactive to September 1, 1987.

D. Upon violation of the conditions of probation, the court may enter a judgment of guilt and proceed as provided in Section 991a of this title. Further, if the probation is for a felony offense, and the defendant violates the conditions of probation by committing another felony offense, the defendant shall not be allowed bail pending appeal. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a felony.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1355.13, as amended by Section 10 of Enrolled House Bill No. 2065 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1355.13 A. In every case in which the defendant is subject to the death penalty and an attorney or attorneys other than an attorney or attorneys employed by the Indigent Defense System are appointed to provide representation, an application for compensation shall be accompanied by an affidavit of each appointed attorney, detailing the hours spent on the case and the services rendered. The application shall also state if any amount awarded by the Executive Director shall be the sole source of compensation for the services provided. If other sources of compensation are also used, the other sources of compensation and amounts shall be specified in the application. Except as provided in subsection B of this section, total compensation for ~~counsel, lead and co-counsel, non-System attorneys~~ in a capital ~~case cases~~ shall not exceed Twenty Thousand Dollars (\$20,000.00) per case. ~~In the event a defendant is represented by a System employee, total~~ Total compensation for ~~any co-counsel not employed by the System~~ a non-System attorney who is co-counsel with a System attorney in a capital case shall not exceed Five Thousand Dollars (\$5,000.00) per case.

B. The maximum statutory fee established in this section may be exceeded only upon a determination made by the Executive Director and approved by the Board that the case was an exceptional one which required an extraordinary amount of time to litigate, and that the request for extraordinary attorney fees is reasonable.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 1355.6, as amended by Section 6 of Enrolled House Bill No. 2065 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1355.6 A. The Indigent Defense System shall have the responsibility of defending all indigents, as determined in accordance with the provisions of the Indigent Defense Act, in all felony, misdemeanor, traffic cases punishable by incarceration, and all contempt proceedings punishable by incarceration; provided however, in any case in which the trial court stipulates that upon conviction or finding of contempt of court, the defendant shall not be subject to incarceration, the defendant shall not be entitled to representation pursuant to the Indigent Defense Act. In addition, the System shall have the responsibility of defending all indigents, as determined in accordance with the provisions of the Indigent Defense Act, in juvenile, guardianship, and mental health cases.

B. The System shall be appointed to represent any indigent witness called to testify in state grand jury proceedings.

C. The System shall be appointed to perfect appeals and to provide representation in post-conviction cases in accord with post-conviction policy, to the extent provided in the Indigent Defense Act.

D. When a defendant or, if applicable, his parent or legal guardian requests representation by the System, such person shall submit an appropriate application, the form of which shall state

that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the defendant has been released on bond. In addition, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in this state, and the applicant declares that he or she does not have the means to employ counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Ten percent (10%) of any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the System based on said application, the court shall advise the defendant or, if applicable, his parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the System. Application fees collected pursuant to this subsection shall be transmitted to the State Treasurer, who shall credit the same to the Indigent Defense Revolving Fund. If a case is being handled by an attorney employed by the System, the determination of indigency shall be made by the Executive Director or a designee of the Executive Director, according to guidelines established by the Board based upon criteria provided by the Court of Criminal Appeals and the determination of indigency shall be subject to review by the court. If the case is being handled by a private attorney pursuant to a contract with the System or by a private attorney who has agreed to accept appointments, the determination of indigency shall be made by the Executive Director or a designee of the Executive Director, according to guidelines established by the Board and subject to review by the trial court. When a defendant or, if applicable, his parent or legal guardian requests representation by the System, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the defendant has been released on bond. In addition, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in this state, and the applicant declares that he or she does not have the means to employ counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Ten percent (10%) of any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the System based on said application, the court shall advise the defendant or, if applicable, his parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application

~~shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is applicable, for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the System. Application fees collected pursuant to this subsection shall be transmitted to the State Treasurer, who shall credit the same to the Indigent Defense Revolving Fund.~~

E. If the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond, other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 1355.8, as amended by Section 8 of Enrolled House Bill No. 2065 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1355.8 A. The Executive Director of the Indigent Defense System may select attorneys to handle noncapital indigent trial cases, from the list of attorneys who have volunteered to accept appointments and who meet the qualifications established by the Board for such appointments.

B. Payment to such attorneys shall be made from the budget of the System.

C. The Board shall have the authority to award contracts to provide legal representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state.

D. Any such contract shall be awarded in June of each year for the next succeeding fiscal year.

E. The Executive Director shall cause to be published in the Oklahoma Bar Journal notice that bids will be accepted to provide indigent legal services. The notice required by this subsection shall include the following:

1. The date, time and place where bids will be opened;
2. The qualifications required of those desiring to enter a bid;
3. The period covered by the contract; and
4. A general description of the services required.

F. Only members in good standing of the Oklahoma Bar Association shall be eligible to enter bids pursuant to this section. In addition, all bids must be accompanied by proof of professional liability insurance coverage and a written statement of the manner in which representation shall be made available as needed.

G. The Board shall accept the lowest and best bid or bids if the Board determines that more than one attorney shall be hired, received from a qualified bidder or bidders. ~~For any county, in determining whether or not a bid is the lowest and best bid, the Board shall give priority to any bid submitted by an attorney who take into consideration, whether or not the attorney submitting the bid has an office within that county and whether or not any such office is the attorney's primary office.~~

1. In the event that only one qualified bid is received, the Board shall accept the bid or readvertise.

2. In the event that no qualified bids are received, the Board shall cause to be created a list of qualified volunteer attorneys, who provide proof of professional liability insurance coverage, to provide representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state. Compensation for such attorneys shall be as provided in subsections H through J of this section.

3. In the event that no qualified bids are received and no attorneys agree to serve as volunteer attorneys pursuant to paragraph 2 of this subsection, the Board shall provide for representation for indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state by attorneys employed by the System.

4. In no event shall an attorney, who has not voluntarily agreed to provide representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state, be appointed to represent an indigent person.

H. Except as provided in subsection J of this section, total compensation for a case shall not exceed Eight Hundred Dollars (\$800.00) in the following cases:

1. Juvenile cases;
2. Mental health cases;
3. Post-conviction cases;
4. Grand jury cases;
5. Traffic cases punishable by incarceration;
6. Misdemeanor cases;
7. Guardianship cases; and
8. Contempt proceedings punishable by incarceration.

I. Except as provided in subsection J of this section, total compensation for a case shall not exceed Three Thousand Five Hundred Dollars (\$3,500.00) in felony cases, except capital cases.

J. The maximum statutory fees established in this section may be exceeded only upon a determination made by the Executive Director and approved by the Board that the case was an exceptional one which required an extraordinary amount of time to litigate, and that the request for extraordinary attorney fees is reasonable.

K. Attorneys paid for indigent defense on a contractual basis may be paid an annual fee in twelve monthly installments or as otherwise provided by contract. To receive payment, an attorney must submit a claim in accordance with the provisions of the Indigent Defense Act.

L. Attorneys providing appellate or post-conviction services pursuant to a contract with the System, shall provide periodic status reports, as often as deemed necessary by the Board, of all such cases.

SECTION 9. AMENDATORY 22 O.S. 1991, Section 1362, as amended by Section 15 of Enrolled House Bill No. 2065 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1362. The district court clerks for each county shall transmit one certified copy of the original record for each appeal authorized by the Indigent Defense Act directly to the Executive Director as soon as possible after the filing of the notice of intent to appeal and the order appointing the System, unless additional copies are requested, not to exceed three copies. One certified copy of all transcripts, records and exhibits designated shall be transmitted for each authorized appeal by the district court clerk to the ~~appellate indigent defender~~ Executive Director within the time limits as established by the Rules of the Court of Criminal Appeals and applicable statutes, unless additional copies are requested, not to exceed three copies. The System attorney is hereby authorized to supplement the designation of record as filed by the trial counsel by filing a written supplemental designation of record. When a written supplemental designation of record is filed by the System attorney, it shall be the duty of the court clerk or the court reporter, as appropriate, to include the supplementary materials as part of the record on appeal.

SECTION 10. AMENDATORY 28 O.S. 1991, Section 151, is amended to read as follows:

Section 151. ~~A. From and after the effective date of this act,~~ ~~it~~ It shall be the duty of the clerks of the district court and other trial courts of record of this state to charge and collect the fees as herein provided, and none others, in all cases, except those wherein the defendant is charged with a misdemeanor or traffic violation, and except cases coming within the purview of the Small Claims Act.

B. Payment for any fee herein provided may be made by a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services or anything else of value and which is accepted by over one thousand merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such card.

SECTION 11. AMENDATORY 28 O.S. 1991, Section 153, as amended by Section 27 of Enrolled House Bill No. 2065 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to date of judgment:

1. For each defendant convicted of
 exceeding the speed limit by at
 least one (1) mile per hour but
 not more than ten (10) miles per
 hour, whether charged individually
 or conjointly with others \$57.00

2. For each defendant convicted of
 a misdemeanor, including
 violation of any traffic
 law, other than for driving
 under the influence of alcohol
 or other intoxicating substance
 or an offense provided for in
 paragraph 1 of this subsection,
 whether charged
 individually or conjointly
 with others \$70.00

3. For each defendant convicted of
 a felony, other than for driving
 under the influence of alcohol or
 other intoxicating substance,
 whether charged
 individually or conjointly

- with others \$90.00
- 4. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others \$170.00
- 5. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others \$170.00
- 6. For the services of a court reporter at each trial held in the case \$20.00
- 7. For each time a jury is requested \$30.00
- 8. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice \$20.00 or mileage as established by the Oklahoma Statutes, whichever is greater.

B. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund except that the sheriff's fee provided for in this section and the amount provided for in Section 153.2 of this title, when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted.

C. Forty-six Dollars and fifty cents (\$46.50) of the fee collected for every traffic case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, shall be transmitted to the State Treasurer for deposit into the General Revenue Fund.

D. Costs required to be collected pursuant to this section shall not be dismissed or waived.

E. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

F. Payment for any fee for violation of any traffic law may be made by a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in

obtaining goods, services or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such card.

SECTION 12. AMENDATORY 37 O.S. 1991, Section 163.11, is amended to read as follows:

Section 163.11 A. It shall be unlawful for any person, or persons, to maintain or operate any place where nonintoxicating beverages, as herein defined, are sold for consumption on or off the premises without first securing a permit issued by the district court clerk in and for the county wherein such premises are located.

B. The person applying for such permit must make a showing once a year, and must satisfy the district court clerk that he is a person of good moral character; that he has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the state, or any other state of the United States, within three (3) years immediately preceding the date of his petition, or any of the laws commonly called "Prohibition Laws", or had any permit or license to sell nonintoxicating liquors revoked in any county of this state within twelve (12) months; and that, at the time of his petition for a license, he is not the holder of a retail liquor dealer's permit or license from the United States government to engage in the sale of intoxicating liquor. Nor shall any permit be issued to sell nonintoxicating beverages in any place, location or address, for which there is outstanding license or permit from the United States government.

C. No permit shall be issued to sell nonintoxicating beverages for ~~on-premise~~ on-premises consumption unless the person applying for such permit shall have signed an affidavit stating that the location of the building in which nonintoxicating beverages are to be sold is not prohibited by the provisions of Section 163.24 of this title.

D. A fee of Ten Dollars (\$10.00) per year shall be charged for the issuance of such permit, which fee shall be deposited in the county court fund.

E. Upon petition being filed, the district court clerk shall give thirty (30) days' notice for an initial application ~~and fifteen (15) days' notice for a renewal~~ by causing the same to be posted by the entrance on the front of the building in which said nonintoxicating beverages are to be sold; and a copy of said notice shall also be mailed to the district attorney, the sheriff and the chief of police or marshal of any city or town in which said business is to be operated. Said notice shall contain the name of the applicant and the location of said place of business.

F. If there are no protests and the petition is sufficient on its face, then said permit shall be granted by the district court clerk. Provided, that if any citizen of the county files a written protest setting forth objections, then the district court clerk shall advise the chief judge who shall assign such petition to a district judge or associate district judge for hearing.

G. The application for such permit must be verified and in writing, contain the information above required, and must be set for hearing on a date named in the notice required to be posted.

H. All testimony before the district court shall be under oath.

I. A judge of the district court, upon five (5) days' notice to the person holding such permit, shall revoke such permit for any one of the following reasons:

(1) Drunkenness of the person holding such permit or permitting any intoxicated person to loiter in or around his place of business;

(2) Person under the influence of drugs holding such permit or permitting any drugged person to loiter in or around his place of business;

(3) The sale to any person under twenty-one (21) years of age of nonintoxicating beverages for consumption on the premises;

(4) Permitting persons under the age of twenty-one (21) in a separate or enclosed bar area which has as its main purpose the selling or serving of nonintoxicating beverages for consumption on the premises unless said person's parent or legal guardian is present, in violation of the provisions of Sections 241 through 246 of this title-;

(5) Nonpayment of any of the taxes or license fees imposed by the provisions of this act on complaint of the Oklahoma Tax Commission;

(6) Violating any of the laws of the state commonly called "Prohibition Laws" or violating any of the gambling laws of the state or permitting anyone to violate any of said laws in such places or violating any of the provisions of this act;

(7) Conviction for the violation of any of the laws of this state or the United States for the sale or possession of intoxicating liquors within three (3) years immediately preceding the issuance of such dealer's license;

(8) Proof that the operator has in his possession or on the premises in which said business is being operated, a federal excise or occupational tax stamp or receipt, designating such person or premises as the person or place for dealing in liquor or evidencing the payment of a tax for being a dealer in such liquor; or by

(9) Violating any law pertaining to the use, possession, or sale of drugs or narcotics or the violation of the narcotics laws of the State of Oklahoma or the United States.

J. After the revocation of any such permit, for any of the above reasons, except paragraph (5) for nonpayment of taxes, or license fees, no new permit shall be issued to the same person for the same location or premises prior to the expiration of a period of one (1) year from the date of such revocation.

K. On or before the tenth day of each month each district court clerk shall file with the Oklahoma Tax Commission, on forms prescribed and furnished by the Commission, a report showing the name, address, and county permit number of each such person to whom a county permit has been issued or whose permit has been revoked, or who shall have been refused a county permit, during the previous calendar month. In case of the revocation of a permit by a judge of the district court, the district court clerk shall within five (5) days report such action to the Oklahoma Tax Commission. If county permits shall have been issued, revoked or refused during the month, the district court clerk shall make a report accordingly to the Commission.

SECTION 13. AMENDATORY 37 O.S. 1991, Section 521, as amended by Section 1 of Enrolled House Bill No. 1803 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 521. A. A brewer license shall authorize the holder thereof: To manufacture, bottle, package, and store beer on licensed premises; to sell beer in this state to holders of Class B wholesaler licenses and retail licenses and to sell beer out of this state to qualified persons.

B. A distiller license shall authorize the holder thereof: To manufacture, bottle, package, and store spirits on licensed

premises; to sell spirits in this state to licensed wholesalers and manufacturers only; to sell spirits out of this state to qualified persons; to purchase from licensed distillers and rectifiers in this state, and import spirits from without this state for manufacturing purposes in accordance with federal laws and regulations.

C. A winemaker license shall authorize the holder thereof: To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package, and store on licensed premises wine containing not more than twenty-four percent (24%) alcohol by volume; to sell wine in this state to licensed wholesalers and manufacturers only; to sell bottles of wine produced at the winery from grapes and other fruits and berries grown in this state to consumers on the premises of the winery; to serve visitors on the licensed premises free samples of wine produced on the premises; to sell wine out of this state to qualified persons; to purchase from licensed winemakers, distillers and rectifiers in this state, and to import into this state wine, brandy and fruit spirits for use in manufacturing in accordance with federal laws and regulations.

D. A rectifier license shall authorize the holder thereof: To rectify spirits and wines, bottle, package, and store same on the licensed premises; to sell spirits and wines in this state to licensed wholesalers and manufacturers only; to sell spirits and wines out of this state to qualified persons; to purchase from licensed manufacturers in this state; and to import into this state for manufacturing purposes spirits and wines in accordance with federal laws and regulations.

E. A wholesaler license shall authorize the holder thereof: To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a nonresident seller license, and their agents who are the holders of manufacturers agent licenses; to purchase spirits and wines from licensed distillers, rectifiers, winemakers and wholesalers in this state; to sell spirits and wines in retail containers in this state to retailers, mixed beverage, caterer, special event, hotel beverage or airline/railroad beverage licensees; to sell spirits and wines in containers with a capacity of less than one-twentieth (1/20) gallon in full case lots and in the original unbroken case to hotel beverage or airline/railroad beverage licensees only; to sell spirits and wines to wholesalers authorized to sell same; and to sell spirits and wines out of this state to qualified persons. Wholesalers shall be authorized to place such signs outside their place of business as are required by Acts of Congress and by such laws and regulations promulgated under such Acts.

A wholesaler license shall authorize the holder thereof to operate a single bonded warehouse with a single central office together with delivery facilities at a location in this state only at the principal place of business for which the wholesaler license was granted.

F. A Class B wholesaler license shall authorize the holder thereof: To purchase and import into this state beer from persons authorized to sell same who are the holders of nonresident seller licenses, and their agents who are the holders of manufacturers agent licenses to purchase beer from licensed brewers and Class B wholesalers in this state; to sell in retail containers to retailers, mixed beverage, caterer, special event, hotel beverage and airline/railroad beverage licensees in this state, beer which has been unloaded and stored at the holder's self-owned or leased and self-operated warehouse facilities for a period of at least twenty-four (24) hours before such sale; and to sell beer in this

state to Class B wholesalers and out of this state to qualified persons, including federal instrumentalities and voluntary associations of military personnel on federal enclaves in this state over which this state has ceded jurisdiction.

G. A package store license shall authorize the holder thereof: To purchase alcoholic beverages in retail containers with a capacity of more than one-twentieth (1/20) gallon from the holder of a brewer, wholesaler or Class B wholesaler license and to sell same on the licensed premises in such containers to consumers for off-premises consumption only and not for resale; provided, all alcoholic beverages are to be sold at ordinary room temperature. No package store licensee may purchase or sell alcoholic beverages in retail containers with a capacity of less than one-twentieth (1/20) gallon.

H. A mixed beverage license shall authorize the holder thereof: To purchase alcoholic beverages in retail containers with a capacity of more than one-twentieth (1/20) gallon from the holder of a wholesaler or Class B wholesaler license and to sell, offer for sale and possess mixed beverages for on-premises consumption only. Sales and service of mixed beverages by holders of mixed beverage licenses shall be limited to the licensed premises of said licensee unless the holder of the mixed beverage license also obtains a caterer license. A mixed beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business. No mixed beverage license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title.

I. A bottle club license shall authorize the holder thereof: To store, possess and mix alcoholic beverages belonging to members of the club and to serve such alcoholic beverages for on-premises consumption to club members. A bottle club license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized. A separate license shall be required for each place of business.

J. A caterer license shall authorize the holder thereof: To sell mixed beverages for on-premises consumption incidental to the sale or distribution of food at particular functions, occasions, or events which are temporary in nature. A caterer license shall not be issued in lieu of a mixed beverage license. A caterer license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business.

K. A special event license shall authorize the holder thereof: To sell and distribute mixed beverages for consumption on the premises for which the license has been issued for a period not to exceed ten (10) consecutive days. A special event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

L. A hotel beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine, and 12-ounce malt beverage containers which are distributed from a hotel room mini-bar. A hotel beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A hotel beverage license shall

only be issued to a hotel or motel as defined by Section 506 of this title which is also the holder of a mixed beverage license. Provided, that application may be made simultaneously for both such licenses. A separate license shall be required for each place of business.

M. An airline/railroad beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane or railroad operated in compliance with a valid license, permit or certificate issued under the authority of the United States or this state, even though the airplane or train, in the course of its travel, may cross an area in which the sale of alcoholic beverages by the individual drink is not authorized and to store alcoholic beverages in sealed containers of any size at any airport or station regularly served by the licensee, in accordance with rules and regulations promulgated by the Alcoholic Beverage Laws Enforcement Commission. Alcoholic beverages purchased by the holder of an airline/railroad license from the holder of a wholesaler license shall be presumed to be purchased for consumption outside the State of Oklahoma or in interstate commerce, and shall be exempt from the excise tax provided for in Section 553 of this title.

N. An agent license shall authorize the holder thereof: To represent only the holders of licenses within this state, other than retailers, authorized to sell alcoholic beverages to retail dealers in Oklahoma, and to solicit and to take orders for the purchase of alcoholic beverages from retailers including licensees authorized to sell alcoholic beverages by the individual drink for on-premises consumption. Such license shall be issued only to agents and employees of the holder of a license under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title but no such license shall be required of an employee making sales of alcoholic beverages on licensed premises of his principal. No person holding an agent license shall be entitled to a manufacturers agent license.

O. An employee license shall authorize the holder thereof: To work in a brewery, distillery, winery, package store, mixed beverage establishment, bottle club, or any establishment where alcohol, alcoholic beverage, wine or beer is made, blended, rectified, sold, mixed, or served. Persons employed by a mixed beverage licensee or a bottle club who do not participate in the service, mixing, or sale of mixed beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee or a bottle club shall be required to have an employee license whether or not said manager participates in the service, mixing or sale of mixed beverages. Applicants for an employee license must have a health card issued by the county in which they are employed, if the county issues such a card. Employees of special event, caterer or airline/railroad beverage licensees shall not be required to obtain an employee license. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to be placed in such devices shall be required to have an employee license.

P. An industrial license may be issued to persons desiring to import, transport, and use alcohol for the following purposes:

1. Manufacture of patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;
2. Manufacture of extracts, syrups, condiments, and food products; and
3. For use in scientific, chemical, mechanical, industrial, and medicinal products and purposes.

No other provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol intended for industrial, medical, mechanical, or scientific use.

Any person receiving alcohol under authority of an industrial license who shall use, permit, or cause same to be used for purposes other than authorized purposes specified above, and all such alcohol, shall be liable to all provisions of the Oklahoma Alcoholic Beverage Control Act, including payment of tax thereon.

No provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol withdrawn by any person free of federal tax under a tax-free permit issued by the United States government, if such alcohol is received, stored, and used as authorized by federal laws.

Q. A carrier license may be issued to any common carrier operating under a certificate of convenience and necessity issued by any duly authorized federal or state regulatory agency. Such license shall authorize the holder thereof to transport alcoholic beverages into, within, and out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations.

R. A private carrier license may be issued to any carrier other than a common carrier described in subsection P of this section. Such license shall authorize the holder thereof to transport alcoholic beverages into, within, or out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations. No carrier license or private carrier license shall be required of licensed brewers, distillers, winemakers, rectifiers, wholesalers, or Class B wholesalers, to transport alcoholic beverages from the place of purchase or acquisition to the licensed premises of such licensees and from such licensed premises to the licensed premises of the purchaser in vehicles owned or leased by such licensee when such transportation is for a lawful purpose and not for hire.

No carrier license or private carrier license shall be required of the holder of a package store, mixed beverage, caterer, special event, hotel beverage or airline/railroad license to pick up alcoholic beverage orders from the licensees wholesaler or Class B wholesaler from whom they are purchased, and to transport such alcoholic beverages from the place of purchase or acquisition to the licensed premise of such licensees in vehicles owned or under the control of such licensee or a licensed employee of such licensee under such terms, conditions, limitations and restrictions as the ABLE Commission may prescribe.

S. A bonded warehouse license shall authorize the holder thereof: To receive and store alcoholic beverages for the holders of storage licenses on the licensed premises of the bonded warehouse licensee. No goods, wares or merchandise other than alcoholic beverages may be stored in the same bonded warehouse with alcoholic beverages. The holder of a bonded warehouse license shall furnish and file with the ABLE Commission a bond running to all bailers of alcoholic beverages under proper storage licenses and their assignees (including mortgagees or other bona fide lienholders) conditioned upon faithful performance of the terms and conditions of such bailments.

T. A storage license may be issued to a holder of a brewer, distiller, winemaker, rectifier, wholesaler, Class B wholesaler, nonresident seller, package store, mixed beverage, caterer, or hotel beverage license, and shall authorize the holder thereof: To store alcoholic beverages in a public warehouse holding a bonded warehouse

license, and no goods, wares or merchandise other than alcoholic beverages may be stored in the same warehouse with alcoholic beverages in private warehouses owned or leased and operated by such licensees elsewhere than on their licensed premises. Provided, that a storage license issued to a Class B wholesaler shall permit the storage of light beer and permit the sale and delivery to retailers from the premises covered by such license. Provided further, that any licensee who is the holder of both a mixed beverage license and a caterer license or a mixed beverage license and a hotel beverage license who is issued a storage license shall store all inventories of alcoholic beverages either on the premises of the mixed beverage establishment or in the warehouse.

~~U. No bonded warehouse license or storage license shall be issued for any location that is not within the boundaries of an incorporated city or town of a population of two hundred (200) or more, according to the last preceding Federal Decennial Census.~~

~~V. A sacramental wine supplier license shall authorize the holder thereof: To sell, ship or deliver sacramental wine to any religious corporation or society of this state holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1986, and listed as an exempt organization in Section 501(c) (3) of the Internal Revenue Code, 1986, of the United States, as amended.~~

SECTION 14. This act shall become effective July 1, 1992.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 28th day of May, 1992.

President of the Senate

Passed the House of Representatives the 28th day of May, 1992.

Speaker of the House of Representatives