

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2196

BY: HUTCHCROFT

AS INTRODUCED

AN ACT RELATING TO INTOXICATING BEVERAGES; AMENDING
37 O.S. 1991, SECTIONS 163.4, 163.7, 163.14 AND
231, WHICH RELATE TO NONINTOXICATING BEVERAGES;
AUTHORIZING RETAIL DEALERS TO BREW NONINTOXICATING
BEVERAGES FOR CONSUMPTION ON THE LICENSED PREMISES;
PROVIDING FOR PAYMENT OF EXCISE TAX; REQUIRING
PAYMENT OF A LICENSE FEE AND STATING AMOUNT
THEREOF; PROVIDING REPORTING REQUIREMENTS;
MODIFYING PROVISIONS AGAINST SUBSIDIZATION OF
DEALERS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 163.4, is amended to read as follows:

Section 163.4 The excise tax levied on nonintoxicating beverages under ~~the preceding section~~ Section 163.3 of this title shall be paid by the following:

(a) Manufacturers. When the sale is made by a manufacturer, located and doing business in this state, to a wholesaler, located and doing business in this state, the tax shall be paid by the wholesaler.

When the sale is made by a manufacturer located outside of the state and doing business in this state by virtue of and under permit issued as hereinafter provided to a wholesaler located and doing business in this state the tax shall be paid by the wholesaler.

When the sale is made by a manufacturer located and doing business in this state to a retail dealer located and doing business in this state, the tax shall be paid by the manufacturer, who must also be the holder of an effective wholesale beverage dealer's license. Before making any such sale to a retail dealer the manufacturer must apply for and procure a license as a wholesaler, provided for in this act.

(b) Wholesalers. When the sale is made by a wholesaler, located and doing business in this state, to a retail dealer located and doing business in this state, the tax shall be paid by the wholesaler. Such wholesalers may sell only to licensed retail dealers nonintoxicating beverages upon which the tax provided by this act has first been paid by such wholesaler.

When the sale is made by a wholesaler, located and doing business outside this state, and who has obtained an Oklahoma wholesale beverage dealer's license, to a retail dealer located and doing business in this state, the wholesaler shall be liable for and must pay to the Tax Commission the beverage tax due on such sales. In the event of a retail dealer, doing business in this state, purchases beverage from a wholesaler doing business outside this state, and who does not have an Oklahoma wholesale beverage dealer's license, the retailer shall be liable for and must pay to the Oklahoma Tax Commission the tax due on such sales. Both the wholesalers and retailers liable for the payment of such tax shall, on forms prescribed by the Tax Commission, report to the Tax Commission such sales and deliveries.

For the purpose of collecting and remitting the tax imposed under this act, the wholesaler collecting such tax is hereby

declared to be the agent of the state for such purposes, and his failure to remit or pay such tax to the state, when due, shall constitute embezzlement, and any such wholesaler, upon conviction, shall be punished as provided by law for the embezzlement of public funds.

(c) Retail Dealers. Retail dealers, where the out-of-state manufacturer or wholesaler has paid the tax under the provisions of this act, shall not be required to pay the tax. However, nothing in this act shall operate to relieve any retail dealer from payment of the tax where such retail dealer has at any time in his possession or exhibits for sale nonintoxicating beverages upon which the tax has not been paid. In such case all the provisions of this act relating to reports, returns, and payment of the tax shall apply to such retail dealer, and any refusal to comply with the requirements regarding reports, returns, and payment of the tax, or any violation of any of the penal sections of this act, shall likewise subject such retail dealer to the penalties and punishments prescribed for other taxpayers. In addition, any retail dealer that brews nonintoxicating beverages for consumption on the licensed premises shall be required to pay the tax.

No retail dealer may sell any nonintoxicating beverages except at retail, for consumption or use; and no retail dealer may have in his possession, or offer for sale, any such beverage upon which the tax shall not have been paid.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 163.7, is amended to read as follows:

Section 163.7 In addition to the excise tax payable under this act, and in addition to the license required to be procured from the judge of the district court, the following permits shall be required and the following annual license taxes shall be payable to the Oklahoma Tax Commission with respect to nonintoxicating beverages:

(a) Manufacturers: Every manufacturer, located and doing business in this state, shall, before commencing the manufacture of nonintoxicating beverages, obtain from the Oklahoma Tax Commission a permit to engage in such manufacture. As a condition of the issuance of this permit such manufacturer shall pay to the Tax Commission a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. This permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. Each and every other manufacturer of such beverages, coming within the provisions of this act, shall before selling or offering for sale such beverages within the State of Oklahoma, qualify with the Secretary of State of the State of Oklahoma for a permit to do business within the State of Oklahoma and, after so qualifying, shall obtain a permit or license from the Oklahoma Tax Commission and, in addition to any other license, taxes or fees, pay therefor a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. The said permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of nonintoxicating beverages. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. The receipt of payment of such permit or license shall be on file with the Oklahoma Tax Commission before such manufacturer shall sell, or offer for sale, such beverages to any person within the State of Oklahoma.

Every manufacturer, located and doing business outside the State of Oklahoma, desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required to wholesalers, as provided for under this section. The payment of such fee shall be

in addition to the payment of the license fee or tax in the sum of Five Hundred Dollars (\$500.00) as provided herein.

(b) Wholesalers: Every wholesaler, located and doing business in this state, must annually obtain from the Oklahoma Tax Commission a permit to sell nonintoxicating beverages. As a condition of the issuance of this permit such wholesaler shall pay to the Tax Commission a license fee of Two Hundred Fifty Dollars (\$250.00) which shall cover a one-year period commencing with the effective date of such permit. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period.

Every wholesaler, located and doing business outside the state desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required of wholesalers located and doing business in this state.

Wholesalers within this state shall be required to secure an annual permit and must pay an annual license tax for each city or incorporated town from which deliveries of nonintoxicating beverages are made to retail dealers.

Permits issued to wholesalers shall not be transferable from one person to another person but shall be transferable from one location to another location.

(c) Retail Dealers: Every retail dealer shall, before offering nonintoxicating beverages for sale to the public, obtain from the Oklahoma Tax Commission a permit to engage in such sales, and shall pay to the Oklahoma Tax Commission, in advance of the issuance of said permit, the license tax, as follows:

(1) Each retail dealer who sells nonintoxicating beverages, on draught and in original packages, for consumption on or off the premises shall pay a license tax of One Hundred Dollars (\$100.00).

(2) Each retail dealer who sells such beverages in original packages only for consumption on or off the premises shall pay an annual license tax of Fifty Dollars (\$50.00).

(3) Special licenses, as provided, may be issued for the sum of Five Dollars (\$5.00) per day for each license; provided, that in the event any state or county fair association shall meet for more than five (5) days in any year, a special license for the sale of such beverages shall be issued for the sum of Twenty-five Dollars (\$25.00).

(4) Each retail dealer who sells such beverages in original packages and not for consumption on the premises, shall pay an annual license tax of Ten Dollars (\$10.00). It shall be unlawful for such off-premise dealer to allow any bottle, can, or original package to be broken or opened, or to allow any of such nonintoxicating beverage to be consumed, in or upon the premises described in such permit.

(5) Each retail dealer, licensed pursuant to subparagraph (1) or (2) of this paragraph, who brews nonintoxicating beverages for consumption on the premises shall pay an additional annual license fee of One Hundred Dollars (\$100.00).

SECTION 3. AMENDATORY 37 O.S. 1991, Section 163.14, is amended to read as follows:

Section 163.14 (a) Each and every manufacturer shall report to the Commission in writing, under oath, monthly, not later than the tenth of each month, all sales of beverages, as herein defined, made during the preceding month to licensed wholesalers within the State of Oklahoma; and all sales made otherwise, during said period, including those for delivery outside the state; and such reports shall be upon forms prepared and furnished by said Commission and shall contain such information as may be required by it.

(b) Each wholesaler shall, likewise, report to the Commission, in writing, under oath, not later than the tenth day of each month,

each and every sale of beverages, as herein defined, made for delivery outside the state, and shall likewise report the volume of sales to persons within the state. At the same time each wholesaler shall report to the Commission, in writing, each and every purchase or consignment of beverage received by him.

(c) Each and every retail dealer shall keep accurate records of all sales of nonintoxicating beverages, as herein defined whether purchased or brewed by the retail dealer, to consumers or users, and of all purchases of such beverages from wholesalers or otherwise; and such records shall be preserved for a period of three (3) years and shall be open to inspection at all times by the Commission or any of its employees.

SECTION 4. AMENDATORY 37 O.S. 1991, Section 231, is amended to read as follows:

Section 231. A. From and after sixty (60) days from the passage of this act, it shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a brewer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of nonintoxicating malt beverages, individually or through or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

1. Acquire, hold, or own any interest in the permit, license, premises, or business of a retail dealer in nonintoxicating malt beverages.

2. Acquire, hold, or own any interest in the real or personal property owned, occupied, or used by a retail dealer in nonintoxicating malt beverages in the conduct of his business.

3. Furnish, give, rent, lend, or sell to a retail dealer in nonintoxicating malt beverages any equipment, fixture, outside signs, supplies, or other things having a real or substantial value.

Provided that this paragraph shall not be construed to prohibit the furnishing of normal point of purchase advertising matter to such retail dealer in nonintoxicating malt beverages.

4. Pay or credit a retail dealer in nonintoxicating malt beverages for any advertising display or distribution service.

5. Guarantee or procure another to guarantee any loan or the payment of any financial obligation of a retail dealer in nonintoxicating malt beverages.

6. Extend credit to a retail dealer in nonintoxicating malt beverages.

7. Offer or give any bonus, premium, or compensation to an officer, employee, associate, relative, or representative of a retail dealer in nonintoxicating malt beverages.

8. Sell, offer for sale, or contract to sell to any retail dealer in nonintoxicating malt beverages any malt beverages on consignment, or with the privilege of return, or on any basis other than a bona fide cash sale.

9. Use or employ any device or scheme to subsidize in any manner any retail dealer in nonintoxicating malt beverages.

10. Permit any retail dealer in nonintoxicating malt beverages to do for such brewer, importer, wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of nonintoxicating malt beverages any of the above acts hereby made unlawful to be done on behalf of such retail dealer in nonintoxicating malt beverages.

B. The provisions of this section shall not preclude a retail dealer from brewing nonintoxicating beverages for consumption on the licensed premises of the retail dealer.

SECTION 5. This act shall become effective September 1, 1992.

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