

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 764

BY: SMITH

AS INTRODUCED

AN ACT RELATING TO COURT FEES; AMENDING 12 O.S. 1991, SECTION 158.1, 15 O.S. 1991, SECTION 767, 21 O.S. 1991, SECTIONS 995.3 AND 1102, 28 O.S. 1991, SECTIONS 31, 151 AND 152, AND 37 O.S. 1991, SECTION 163.11, WHICH RELATE TO LICENSING OF PRIVATE PROCESS SERVERS, LICENSING OF CLOSING OUT SALES, LICENSING OF BINGO ORGANIZATIONS OR ASSOCIATIONS, LICENSING OF PUBLIC POOLS OR BILLIARD HALLS, FEES PAYABLE TO COURT CLERK, AND ISSUANCE OF CERTAIN RETAIL PERMITS; REQUIRING CERTAIN FEES TO BE DEPOSITED IN COURT CLERK'S REVOLVING FUND; PERMITTING COURT CLERK TO PROCESS PASSPORTS; PROVIDING FOR PAYMENT OF FEES BY CREDIT CARD; CHANGING CERTAIN COURT COST AMOUNTS; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 158.1, is amended to read as follows:

Section 158.1 A. Service and return of process in civil cases may be by an authorized licensed private process server. The

presiding judge of the judicial administrative district in which the county is located, or such associate district judge or district judge of the county as may be designated by the presiding judge, shall be authorized to issue a license to make service of process in civil cases to a person deemed qualified to do so. The authority of the licensee shall be statewide.

B. Any person eighteen (18) years of age or older, of good moral character, and found ethically and mentally fit may obtain such license by filing application therefor with the court clerk on a verified form to be prescribed by the Administrative Director of the Courts.

C. The applicant filing for such license shall pay a license fee of Thirty-five Dollars (\$35.00), and the regular docketing, posting, mailing, and filing fees prescribed by law. The license shall contain the name, address, a brief description of the licensee, and, at the discretion of the district court clerk, a recent photograph of the licensee. The license shall state that the licensee is an officer of the court only for the purpose of service of process. The license shall be carried by the licensee while on duty as a private process server. At the end of one (1) calendar year from the date of issuance of the initial license, the license shall be renewed for a period of one (1) year. The license shall be renewed each succeeding year. A fee of Five Dollars (\$5.00) per year shall be charged for renewal of license. All license fees collected pursuant to this section shall be deposited in the ~~court fund~~ Court Clerk's Revolving Fund created in Section 220 of Title 19 of the Oklahoma Statutes.

D. Upon the filing of the application for license, the court clerk shall give five (5) days' notice of hearing by causing the notice to be posted in the courthouse. A copy of said notice shall be mailed to the district attorney, the sheriff, and the chief of police or marshal in the county seat and shall contain the name of

the applicant and the time and place the presiding judge or such associate district judge or district judge as is designated by the presiding judge will act upon said application.

E. If, at the time of consideration of the new application or application for a license renewal, there are no protests and the applicant appears qualified, the application for said license shall be granted by the presiding judge or such associate district judge or district judge as is designated by the presiding judge and, upon executing bond running to the State of Oklahoma in the amount of Five Thousand Dollars (\$5,000.00) for faithful performance of his duties and filing said bond with the court clerk, the applicant shall be authorized and licensed to serve civil process statewide.

F. If any citizen of the county files a written protest setting forth objections to the licensing of the applicant, the district court clerk shall so advise the presiding judge or such associate district judge or district judge as is designated by the presiding judge, who shall set a later date for hearing of application and protest. Said hearing shall be held within thirty (30) days and after notice to all persons known to be interested.

G. Upon an annual filing of a certified copy of a license issued pursuant to the provisions of this section and payment of a filing fee of Ten Dollars (\$10.00) to the court clerk of any county within this state, a licensed process server may serve process in that county for the district court having jurisdiction over said county.

H. Proof of service of process shall be shown by affidavit as provided for by subsection G of Section 2004 of this title.

I. The district attorney of the county wherein a license authorized under this act has been issued may file a petition in the district court to revoke the license issued to any licensee, as authorized pursuant to the provisions of this section, alleging the violation by the licensee of any of the provisions of the law.

After at least ten (10) days' notice by certified mail to the licensee, the chief or presiding judge, sitting without jury, shall hear said petition and enter an order thereon. If said license is revoked, the licensee shall not be permitted to reapply for a license for a period of five (5) years from the date of revocation. Notwithstanding any other provisions of this section, any licensee whose license has been revoked one time shall pay the sum of One Thousand Dollars (\$1,000.00) as a renewal fee. If a second revocation occurs, the chief or presiding judge shall not allow an applicant to renew the license.

J. The district court clerk shall keep posted at all times in his office the list of licensed private process servers. Any person in need of a process server's services may designate one from the names on the list, before presenting summons to the court clerk for issuance, without necessity for individual judicial appointment.

K. All original or renewal license fees, except regular docketing, mailing and filing fees prescribed by law which shall be deposited in the court fund, shall be deposited in the Court Clerk's Revolving Fund created by Section 220 of Title 19.

SECTION 2. AMENDATORY 15 O.S. 1991, Section 767, is amended to read as follows:

Section 767. A. It shall be unlawful for any person to advertise or conduct a closing out sale unless a license is first obtained to conduct such sale. Any applicant for a closing out sale license shall file an application in writing and under oath with the clerk on an application form prescribed by the Attorney General. The application form shall contain the following information, and such other information as the Attorney General may require:

1. The name and address of the owner of the goods, wares, or merchandise to be sold;

2. A description of the place of business where the sale is to be held;

3. The name and address of the person holding or conducting the sale;

4. The nature of the occupancy of the place where the sale is to be held, whether by lease or otherwise, and the effective date of termination of the occupancy;

5. A full and complete statement of the facts regarding the proposed sale, including the reason the sale is being conducted, the manner in which the sale will be conducted, and the commencement and termination date of the sale; and

6. A complete and detailed inventory of the goods, wares, and merchandise to be offered at the sale as disclosed by the records of the applicant or a statement of both the cost and retail value of the inventory of goods, wares, and merchandise to be offered at the sale, based on the physical inventory used for the most recent federal income tax returns adjusted for sales, purchases, and markdowns of the applicant. Adjustments for sales, purchases, and markdowns shall be shown on a monthly basis to the date of the application.

B. Each application shall be accompanied by an affidavit signed by the applicant attesting to the facts in the application.

C. A fee of Twenty-five Dollars (\$25.00) shall be charged by the clerk of the district court for the issuance of a license and deposited in the Court Clerk's Revolving Fund created by Section 220 of Title 19 of the Oklahoma Statutes.

D. Any person making a false statement in the application, upon conviction, shall be guilty of a felony.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 995.3, is amended to read as follows:

Section 995.3 Any organization or association may apply to the district court clerk of the county in which it is situated for a license to conduct bingo games. The application shall be on such form as designed by the Administrative Director of the Courts and

shall state sufficient facts to enable a determination as to whether the license should be issued. Except in the case of churches which are naturally immune from taxation according to the Internal Revenue Code, 26 U.S.C., Section 1 et seq., said application shall be accompanied by a copy of the sales tax permit in the name of the organization, a copy of a letter or other certificate from the Internal Revenue Service wherein it is recognized that the applicant or parent organization or association of the applicant is a nonprofit organization and exempt from payment of federal income taxes, a copy of the minutes of a meeting of such applicant designating current officers of such organization or association and their terms of office; a copy of the minutes of a meeting of such applicant authorizing the application for a bingo license; a certified copy of the applicant's articles of incorporation or corporate trade name report or the organization constitution and bylaws, if unincorporated under Section 501(c)(5) of the Internal Revenue Code; and a copy of the federal identification number of the applicant or of the parent organization or association of the applicant. Said application shall state that the applicant is an organization or association which has been in existence for longer than two (2) years continuously immediately preceding the date of such application; that it proposes to conduct bingo at a specific location and setting forth such location, provided, no more than three licenses may be issued for any one location or building. Except that different organizations may conduct bingo at a single location for not to exceed six (6) days a week, however, bingo shall not be conducted more than two (2) days in a given week on a single license, no license shall be issued if a license has previously been issued and has not expired or been revoked pursuant to the provisions of Section 995.1 et seq. of this title for the location specified in the application; that no commission, salary, compensation, reward or recompense will be paid to any person for

conducting such games except when the conducting of such games is only incidental to the regular employment of employees of such organization; that the applicant will abide by all the provisions of this act. Said application shall also state the name and address of some person authorized to receive notice in behalf of said licensee. All of the requirements provided for in this section shall be sworn and attested to by a designated principal officer of said nonprofit organization or association or by the attorney of record for the organization or association. The applicant applying for such license shall pay to the district court clerk a fee of Thirty Dollars (\$30.00) for the issuance of the initial license. At the end of one (1) calendar year from the date of the issuance of the initial license, the licensee shall renew such license for a period of one (1) year. A charge of Seven Dollars and fifty cents (\$7.50) per year shall be charged for the issuance of such renewal license. All such fees shall be deposited in the ~~court fund~~ Court Clerk's Revolving Fund created by Section 220 of Title 19 of the Oklahoma Statutes. Upon application being filed, the district court clerk shall give five (5) days' notice by causing the same to be posted on the front of the building in which such bingo games are to be conducted. A copy of said notice shall be mailed to the district attorney, the sheriff and the chief of police or marshal of any city or town in which said bingo games are to be held. Said notice shall contain the name of the applicant and the location of said place of business and the time and place the said clerk will act upon said application. If there are no protests and the application is sufficient on its face, then said license 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 hear the application or assign such application to a district judge or associate district judge or special judge for hearing. Said hearing

shall be held within thirty (30) days and after due notice. The application for such license must be in writing and verified by the presiding officer of the applicant organization. All testimony before the district court shall be under oath.

A license granted pursuant to the provisions of this section shall not be leased, assigned, sold or transferred to any other organization, person or entity of any nature and no bingo game shall be administered or conducted pursuant to the provisions of Section 995.1 et seq. of this title except by the organization to which a license has been issued.

An applicant organization shall be denied a license if any officer of the organization has been convicted of a felony pursuant to the laws of the United States, this state or any other state.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1102, is amended to read as follows:

Section 1102. It shall be unlawful for any person or persons or corporation to maintain or operate a public pool or billiard hall, or any public pool or billiard table, in any incorporated city or town, without first securing license issued by the district court clerk. The person applying for such license must make a showing once each year, and 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 regulating the traffic in any spirituous, vinous, fermented or malt liquors, or any of the intoxicating or nonintoxicating beverage laws of the state, or convicted of violating any of the gambling laws of the state. A fee of Ten Dollars (\$10.00) per year shall be charged for the issuing of such license which shall be deposited in the Court Clerk's Revolving Fund created by Section 220 of Title 19 of the Oklahoma Statutes. Upon application being filed, the district court clerk shall give five (5) days' notice by posting notices, one of said notices to be posted at the county courthouse, one notice to be served on the

district attorney or his assistant and three (3) notices in the city or town where said pool hall shall be located. Said notice shall contain the name of the applicant and the location of said pool or billiard hall. Any citizen of said city or town may appear before the district court clerk and protest the issuance of said license. Any party aggrieved by any decision of the court clerk can appeal to the district court as specified in Section 163.11 of Title 37 of the Oklahoma Statutes. Any person violating any provision of this section shall be punished by fine, not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), for each offense.

SECTION 5. AMENDATORY 28 O.S. 1991, Section 31, is amended to read as follows:

Section 31. The clerk of the district court, ~~or the clerk of any other court of record,~~ shall charge and collect the following fees for services by them respectively rendered and none others, except as otherwise provided by law:

1. Approving bond or undertaking, including
certificate and seal \$3.00
2. Making copy of an instrument of record or
on file, first page..... 1.00
subsequent pages (each)50
3. Certifying to any instrument (each)50
4. Authentication of court records 5.00
5. Receiving and paying out money in pursuance
of law or order of court 1%
provided, however, that such charge shall not
exceed \$300.00
6. In any case which has been on file and
pending without activity for a period of
five (5) years and in which there is on
hand, unexpended, a balance of deposits

for costs, there shall be a charge annually thereafter for accounting, to be deducted from any such balance, and to the extent available therefor, an annual fee of 3.00

7. Application, issuing, entering return and recording marriage license 25.00

8. Conveyance of full-blood Indian heirs to interest in inherited lands, same to be accounted for as other fees 5.00

9. Storage and indexing of wills 5.00

10. Posting notice outside the courthouse 10.00

11. Mailing, by any type of mail, writs, warrants, orders, process, command or notice for each person 5.00

12. except ordinary mailing of first-class mail in probate cases, for each case 5.00

13. For the actual cost of all postage in each case in excess of 5.00

14. For filing and indexing of disclaimers other than in pending probate or civil cases pursuant to the provisions of Section 751 et seq. of Title 60 of the Oklahoma Statutes 5.00

Fees collected in paragraphs 7 and 10 of this section shall be deposited in the Court Clerk's Revolving Fund created by Section 220 of Title 19 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 35.1 of Title 28, unless there is created a duplication in numbering, reads as follows:

The duties of the court clerk may include the process of passports as permitted and prescribed by federal law and regulation

if the court clerk files a written election with the Administrative Director of the Courts to process passports. Upon the filing of said election to process passports as an official duty and service, the court clerk shall execute such passport applications as are presented and all passport fees and portions of such passport fees retained by the court clerk, as permitted and prescribed by federal law and regulation, shall be mandatorily deposited by the court clerk in a fund in the county treasury designated in Section 220 of Title 19 of the Oklahoma Statutes as the Court Clerk's Revolving Fund.

SECTION 7. AMENDATORY 28 O.S. 1991, Section 151, is amended to read as follows:

Section 151. From and after the effective date of this act, 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.

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 on credit 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 any fee. Provided however the court clerk must ensure that no loss of state revenue will occur by the use of such card.

SECTION 8. AMENDATORY 28 O.S. 1991, Section 152, is amended to read as follows:

Section 152. A. In any civil case filed in district court, the court clerk shall collect, at the time of filing, ~~the one~~ one following flat ~~fees~~ fee, none of which shall ever be refundable, and which shall be the only charge for court costs through judgment in the case, except as is otherwise specifically provided for by law:

1. ~~Actions~~ All civil actions including, but not limited to, actions for divorce, alimony without divorce, separate maintenance, custody or support, probate and guardianship, judicial determination of death, adoption, condemnation, forcible entry and detainer, enforcement of judgments from all the courts including the Workers' Compensation Court ~~\$62.00~~
\$100.00

2. Any ancillary proceeding to modify or vacate a divorce decree or prior order providing for custody or support, any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship, or any proceeding to revoke the probate of a will or any other action after judgment including an annual guardianship report \$30.00

3. ~~Probate and guardianship~~ ~~\$62.00~~
Garnishment \$20.00

4. ~~Annual guardianship report~~ ~~\$20.00~~
Continuing wage garnishment \$50.00

5. ~~Any proceeding for sale or lease of real or personal property or~~

mineral interest in probate or	
guardianship	\$30.00
6. Any proceeding to revoke the probate	
of a will	\$30.00
7. Judicial determination of death.....	\$35.00
8. Adoption	\$62.00
9. Civil actions and condemnation	\$62.00
10. Garnishment	\$10.00
11. Continuing wage garnishment	\$50.00
12. Any other proceeding after judgment	\$20.00
13. All others, including but not limited	
to actions for forcible entry and detainer,	
judgments from all other courts, including	
the Workers' Compensation Court	\$62.00

B. Of the amount collected pursuant to subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the county Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In any case where the litigant claims he has a just cause of action, and that, by reason of poverty, he is unable to pay the fees and costs provided for in this section and financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths by such litigant in such action to that effect and upon satisfactory showing to the court that said litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may in any event file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of such poverty. In all such cases, the court shall promptly set for hearing the determination of the eligibility of the original affiant to litigate without payment of

fees or costs. Until a final order determining the ineligibility of such affiant has been entered, the clerk shall permit such affiant to litigate without payment for fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 9. 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~~ Court Clerk's Revolving Fund created by Section 220 of Title 19 of the Oklahoma Statutes.

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 10. This act shall become effective July 1, 1992.

SECTION 11. 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.

43-2-1351

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