

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1710

By: Paulk

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Section 163.7, as amended by Section 2, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1992, Section 163.7), which relates to nonintoxicating beverages; requiring certain licensees to maintain liability insurance; stating purpose; stating minimum policy limits; amending 37 O.S. 1991, Section 521, as last amended by Section 13, Chapter 357, O.S.L. 1992 (37 O.S. Supp. 1992, Section 521), which relates to alcoholic beverages; requiring certain licensees to maintain liability insurance; stating purpose; stating minimum policy limits; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 163.7, as amended by Section 2, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1992, 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) Each retail dealer who sells nonintoxicating beverages purchased from a licensed manufacturer or licensed wholesaler for consumption on or off the premises and who sells nonintoxicating beverages manufactured by said retail dealer for consumption on the premises shall pay an annual license fee of One Hundred Fifty Dollars (\$150.00). Provided, a retail dealer licensed pursuant to this subparagraph shall not manufacture more than five thousand (5,000) barrels of nonintoxicating beverages per year.

(4) 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).

(5) 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. Each retail dealer that sells nonintoxicating beverages for consumption on the premises shall maintain, as a condition for licensing, an insurance policy providing coverage against loss from liability for damages arising out of the selling or serving of nonintoxicating beverages in the licensed establishment. The policy shall provide coverage of at least One Million Dollars (\$1,000,000.00) for total liability for claims arising out of a single incident. Holders of licenses issued prior to September 1, 1993, that do not obtain the required

insurance by October 1, 1993, shall be subject to license revocation.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 521, as last amended by Section 13, Chapter 357, O.S.L. 1992 (37 O.S. Supp. 1992, Section 521), 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. Each mixed beverage licensee shall maintain, as a condition for licensing, an insurance policy providing coverage against loss from liability for damages arising out of the selling or serving of alcoholic beverages in the licensed establishment. The policy shall provide coverage of at least One Million Dollars (\$1,000,000.00) for total liability for claims arising out of a single incident. Holders of licenses issued prior to September 1, 1993, that do not obtain the required insurance by October 1, 1993, shall be subject to license revocation.

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. Each bottle club licensee shall maintain, as a condition for licensing, an insurance policy providing coverage against loss from liability for damages arising out of the serving of alcoholic beverages in the licensed establishment. The policy shall provide coverage of at least One Million Dollars (\$1,000,000.00) for total liability for claims arising out of a single incident. Holders of licenses issued prior to September 1, 1993, that do not obtain the required insurance by October 1, 1993, shall be subject to license revocation.

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. 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 3. This act shall become effective September 1, 1993

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