STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1801 By: Bastin

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Sections 523 and 532, which relate to the Oklahoma Alcoholic Beverage Control Act; limiting the number of retail package store licenses which may be issued in municipalities; limiting the number of mixed beverage licenses which may be issued in certain counties; providing that certain bottle clubs have preference in procuring mixed beverage license after affirmative vote of the people; specifying method of determination of population; requiring Alcoholic Beverage Laws Enforcement Commission to publish certain notice; imposing nonrefundable application fee; specifying certain licensing procedures and method of selecting certain applicant; requiring compliance with certain rules and payment of license fee; providing procedures for continuance of licensed business; making certain provisions retroactive to certain date; specifying entities to which certain provisions do not apply; requiring certain entities to keep receipts of food and beverage for three-month period under certain conditions; deleting certain provisions relating to the nature of certain licenses; deleting certain

provisions relating to transfer or continuance of license; providing that license be transferable under certain conditions; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 523, is amended to read as follows:

Section 523. A. No license provided for in the Oklahoma Alcoholic Beverage Control Act shall be issued except pursuant to an application filed with the Alcoholic Beverage Laws Enforcement Commission. The ABLE Commission may, however, provide for a form of simplified application for renewal of license. Payment of the prescribed fee shall accompany each application for a license.

B. Every applicant for an original license, except applicants for an employee, special event or airline/railroad beverage license, shall also furnish the following:

1. A tax receipt proving payment of ad valorem taxes, including real and personal taxes, or furnish to the ABLE Commission satisfactory evidence that no taxes are due or delinquent;

2. A certificate of zoning issued by the municipality in which the applicant proposes to locate the applicant's principal place of business under the license, or by the county if said principal place of business is located outside the incorporated limits of a municipality, certifying that the applicant's proposed location and use thereof comply with all municipal zoning ordinances or county zoning regulations if applicable;

3. A certificate issued by the municipality in which the applicant proposes to locate the applicant's principal place of

business under the license, or by the county if said principal place of business is located outside the incorporated limits of a municipality, certifying that the applicant's existing or proposed operations under the license comply with all municipal or county fire codes, safety codes, or health codes, if applicable; and

4. Authorization, on forms furnished by the ABLE Commission, for complete investigation of the applicant's current financial status as it relates to the application for a license, including but not limited to access to bank accounts, loan agreements, and financial statements.

C. The certificates required by paragraphs 2 and 3 of subsection B of this section shall be signed by the mayor of the municipality or the chairman of the board of county commissioners issuing same, unless the municipality, by ordinance, or the county designates some other officer or entity to issue the certificates. Applications for such certificates shall be in writing and shall contain information in such detail as the municipality or county may reasonably require describing the location and nature of operations to be conducted under the ABLE license. Municipalities and counties shall be required to act on all applications for such certificates within twenty (20) days of receipt of the written application.

D. Municipalities and counties may grant conditional certificates for premises proposed for licensed operations for which construction, modification, or alteration is not completed. Conditional certificates shall indicate that the proposed premises will comply with the municipal or county zoning, fire, safety, and health codes. The granting of conditional certificates shall not relieve the applicant of the duty of obtaining the certificates required by paragraphs 2 and 3 of subsection B of this section after completion of the construction, modification, or alteration.

E. A municipality or county shall issue the certificates required by paragraphs 2 and 3 of subsection B of this section within ten (10) days after all final inspections are completed.

Thereafter if a licensee fails to maintain compliance with municipal or county zoning ordinances and codes, the mayor or chairman of the board of county commissioners or their designee, shall forthwith notify the ABLE Commission in writing setting forth details of the noncompliance.

F. Upon issuance of any license, the ABLE Commission shall furnish the Oklahoma Tax Commission with a list of such licenses.

G. In the event of denial of an application for a license, the ABLE Commission shall refund to the applicant the amount of the tendered fee, less ten percent (10%), which it shall retain as cost of processing the application.

H. Any licensee, except an employee licensee, who fails to renew his license prior to the expiration date of said license shall be subject to a late renewal penalty as provided by ABLE Commission rules and regulations. Further, any licensee, except an employee licensee, who fails to renew his license within sixty (60) days of the expiration of said license shall be required to submit a new license application. An employee licensee who fails to renew prior to the expiration of the license shall be required to submit a new license application; provided, however, that under no circumstances shall any licensee, including an employee licensee, whose license to serve or sell alcoholic beverages has expired, continue to serve or sell alcoholic beverages.

<u>I. The maximum number of retail package store licenses to be issued pursuant to this section in incorporated municipalities shall be not more than one license for each seven thousand two hundred (7,200) inhabitants of the county or counties in which the municipality is located or major fraction thereof.</u>

J. The maximum number of mixed beverage licenses to be issued pursuant to this section shall be as follows, in counties in which the sale of alcoholic beverages by the individual drink is authorized:

Not more than one license for each two thousand nine hundred (2,900) inhabitants of the county or major fraction thereof.

K. All bottle clubs now residing in dry counties will have first option in procuring a mixed beverage license should that county vote favorably to allow mixed beverages; but not to exceed one license per two thousand nine hundred (2,900) inhabitants of the county or major fraction thereof.

L. For the purposes of this section, the number of inhabitants of each county shall be determined by the latest Federal Decennial Census; however if the ABLE Commission determines that the population of a county has increased, the Commission may substitute a more accurate population figure for purposes of this section.

M. If the ABLE Commission determines that a municipality or county is eligible for additional licenses because of an increase in population in the county, the Commission shall publish in a legal newspaper of the county, as defined by Section 106 of Title 25 of the Oklahoma Statutes, notice that new original licenses may be issued. If there is no legal newspaper in a county, the notice shall be published in a legal newspaper which is published in an adjoining county of the state and which has general circulation in the county or municipality which is to receive additional licenses. The notice shall be published at least once a week for two (2) successive weeks. The notice shall set forth the type or types of licenses to be issued and the date, time, manner and place of acceptance of applications for the licenses. Each application for the license shall be accompanied by a nonrefundable fee of Five Hundred Dollars ($500.00). The Commission shall make a determination of those applicants that are eligible to be holders of

licenses pursuant to the Oklahoma Alcoholic Beverages Control Act. The Commission shall devise a random method of selecting one applicant, for each license being made available, to receive the license. The applicant shall comply with all applicable laws and ABLE Commission rules for making a formal application for licensing and shall pay the appropriate fee provided in Section 518 of this title.

N. Subsections I, J and K of this section shall not be construed to prevent any licensee holding a valid license upon the effective date of this act, or his transferee, from continuing the licensed business or from renewing his license, subject to compliance with the Oklahoma Alcoholic Beverage Control Act and ABLE Commission regulations, notwithstanding that the continuance or renewal may result in an excess over the maximum number of licenses permitted by this section. This subsection shall be retroactive when passed to an effective date of January 3, 1993.

O. Subsections I, J and K of this section shall not apply to:

1. Hotels or motels with seventy-five (75) or more guest room accommodations;

2. Restaurants doing sixty-five percent (65%) or more of gross sales in food; provided, if the ABLE Commission has reason to believe that a restaurant qualifying under the sixty-five percent (65%) gross food receipts provision has fallen beneath the aforementioned percentage, the ABLE Commission may require that the restaurant in question keep total receipts of food and beverage for a three-month probationary period; or

3. Service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(8), (10) or (19) of the Internal Revenue Code.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 532, is amended to read as follows:

Section 532. ~~Any license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall be a purely personal privilege. It shall not constitute property nor be subject to attachment, garnishment, or execution, or be alienable or transferable, either voluntarily or involuntarily; nor shall it descend by the laws of descent and distribution, but shall cease upon the death of the licensee; provided, however, that the Alcoholic Beverage Laws Enforcement Commission, under such regulations and subject to such restrictions as it may prescribe, may permit the executors or administrators of the estate of any deceased licensee, or the trustees of an insolvent or bankrupt licensee, or the legal guardian of a licensee who has been adjudged to be incompetent or insane, to exercise the privileges under any license held by him for such period as the ABLE Commission may deem equitable during the administration of the deceased or bankrupt licensee's estate, but not to exceed two (2) years.~~ A. A license for a specified location shall be transferable for an amount agreed upon between the current licensee, the executors or administrators of the estate of any deceased licensee, the trustee of an insolvent or bankrupt licensee, or the legal guardian of an incompetent or insane licensee and a prospective buyer of the location, subject to the following conditions:

1. The current licensee is in good standing with the ABLE Commission;

2. The license is transferred within the county of its origin; and

3. The prospective buyer shall meet all ABLE Commission requirements for the granting of a license.

B. A license may not be transferred to a new location, except upon application to the ABLE Commission and endorsement on the license by the ABLE Commission showing the new location. An application for transfer of license shall be accompanied by a

certificate reflecting, as to the proposed new location, compliance with municipal zoning ordinances or county zoning regulations and municipal or county fire, safety and health codes as required by Section 523 of this title. A mixed beverage or bottle club licensee who transfers his license to a new location shall pay a transfer fee of One Hundred Dollars ($100.00) to the ABLE Commission.

SECTION 3. 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.

44-1-6077 SD