

*PERSONAL.EP4**r***N{*****ENROLLED SENATE

BILL NO. 129

By: Cole, Henry, Williams (Don)
and Fisher of the Senate

and

Davis, Mitchell, Smith
(Dale), Weaver, Claunch,
Adkins, Coleman, Cotner,
Greenwood, Hastings, Perry,
Stites, Vaughn and Webb of
the House

An Act relating to nonintoxicating beverages;

amending Section 18, Chapter 328, O.S.L. 1992 (3A
O.S. Supp. 1994, Section 417), which relates to the
Oklahoma Charity Games Act, 10 O.S. 1991, Section
1102, as last amended by Section 1 of Enrolled
House Bill No. 1475 of the 1st Session of the 45th
Oklahoma Legislature, which relates to children, 11
O.S. 1991, Section 43-102, which relates to cities
and towns, 21 O.S. 1991, Sections 1102, 1103, 1190
and 1220, which relate to crimes and punishments,
37 O.S. 1991, Sections 163.1, 163.2, 163.3, 163.4,
as amended by Section 1, Chapter 91, O.S.L. 1992,
163.5, 163.7, as last amended by Section 1, Chapter
258, O.S.L. 1994, 163.8, as amended by Section 2,
Chapter 258, O.S.L. 1994, 163.9, 163.10, 163.11, as
last amended by Section 1 of Enrolled Senate Bill
No. 123 of the 1st Session of the 45th Oklahoma
Legislature, 163.11A, as amended by Section 4,
Chapter 258, O.S.L. 1994, 163.12, 163.14, as
amended by Section 3, Chapter 91, O.S.L. 1992,
163.15, 163.16, 163.18, Sections 1, 2, 3, 4, 5, 7
and 8, Chapter 140, O.S.L. 1993, 163.19, 163.20,
163.22, 163.24, as amended by Section 26, Chapter
361, O.S.L. 1994, 163.25, 213.1, 213.2, 231, as
amended by Section 4, Chapter 91, O.S.L. 1992, 233,

241, 243, 244, 246, 506, as amended by Section 2, Chapter 361, O.S.L. 1994, 518, as last amended by Section 3, Chapter 361, O.S.L. 1994, 527, as amended by Section 2, Chapter 180, O.S.L. 1993 and 598 (37 O.S. Supp. 1994, Sections 163.4, 163.7, 163.8, 163.11A, 163.14, 163.18A, 163.18B, 163.18C, 163.18D, 163.18E, 163.18G, 163.18H, 163.24, 231, 506, 518 and 527), which relate to nonintoxicating beverages and intoxicating liquors, 57 O.S. 1991, Section 21, as last amended by Section 1, Chapter 48, O.S.L. 1993 (57 O.S. Supp. 1994, Section 21), which relates to prisons and reformatories, 59 O.S. 1991, Section 1315, which relates to professions and occupations, 60 O.S. 1991, Section 178.4, which relates to property, 63 O.S. 1991, Section 1-1523, as amended by Section 14, Chapter 137, O.S.L. 1994 (63 O.S. Supp. 1994, Section 1-1523), which relates to public health and safety, 68 O.S. 1991, Section 205, as last amended by Section 23 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, which relates to revenue and taxation, 70 O.S. 1991, Sections 24-102, 24-132, 24-138 and 1210.229-3, which relate to schools, and 74 O.S. 1991, Section 1851, as amended by Section 1, Chapter 91, O.S.L. 1993 (74 O.S. Supp. 1994, Section 1851), which relates to state government; changing terms "nonintoxicating beverage" and "nonintoxicating malt beverage" to "low-point beer"; defining terms; modifying statutory references; providing that certain permits remain valid until expiration; modifying records of Oklahoma Tax Commission required to be kept

confidential; prohibiting sale of low-point beer during certain time periods; creating Prevention of Youth Access to Alcoholic Beverages and Low-Point Beer Act; specifying short title; defining terms; providing for crime and penalties; providing that certain proof be considered defense to certain action; specifying certain unlawful acts; requiring posting of certain signs and notice to certain employees; specifying certain duties and authority of law enforcement agencies; allowing use of persons under age twenty-one for enforcement purposes and requiring parental consent therefor; prohibiting construction of certain provisions to prevent imposition of other penalties; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 18, Chapter 328, O.S.L. 1992 (3A O.S. Supp. 1994, Section 417), is amended to read as follows:

Section 417. No licensed organization shall sell, serve or permit to be consumed any alcoholic beverage as defined in Section 506 of Title 37 of the Oklahoma Statutes or low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes in any room or outdoor area where and during the time a charity game is being conducted.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1102, as last amended by Section 1 of Enrolled House Bill No. 1475 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1102. A. 1. Upon the filing of a petition, or upon the assumption of custody pursuant to the provisions of Section 1107 of this title, the district court of the county in which a child:

- a. resides,
- b. is found, or
- c. was abused, neglected or deprived or found to be in need of supervision,

shall have jurisdiction of any child who is or is alleged to be abused, neglected or deprived or in need of supervision and shall have jurisdiction of the parent, guardian, legal custodian, legal guardian or stepparent of said child, regardless of where the parent, guardian, legal custodian, legal guardian or stepparent is found; and shall have jurisdiction of any other adult person living

in the home of such child. For any child who is or is alleged to be delinquent, the district court of the county where the cause of action arose shall have jurisdiction of the child and of the parent, guardian, legal custodian, legal guardian or stepparent of said child, regardless where the parent, guardian, legal custodian, legal guardian or stepparent is found; and shall have jurisdiction of any other adult person living in the home of such child.

2. When jurisdiction shall have been obtained over a child who is or is alleged to be in need of supervision or a deprived child, such may be retained until the child becomes eighteen (18) years of age and when jurisdiction shall have been obtained over a child who is or is alleged to be a delinquent, jurisdiction may be retained until the child becomes nineteen (19) years of age upon the court's own motion, motion by the district attorney or motion by the Department, as provided in subsection B of Section 1139 of this title. For the convenience of the parties and in the interest of justice, a proceeding under this chapter may be transferred to the district court in any other county.

B. The district court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of Section 1107 of this title may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another district court within the state. Any adjudication and disposition made by the court in which said petition is filed shall control over prior orders in regard to the child.

C. The district court in which a petition is filed which alleges that a child is in need of supervision or is deprived can issue any temporary order or grant any interlocutory relief authorized by this chapter notwithstanding the fact that another district court within the state has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.

D. If the district court in which a petition is filed pursuant to either subsection B or subsection C of this section sustains the petition, the district court shall have the jurisdiction to make a final determination on the juvenile petition or to transfer the proceedings to a court having prior jurisdiction over the child. Where the other proceeding is pending in the same judicial district in which the juvenile petition is filed, the chief judge of the judicial district shall determine if the proceedings shall be consolidated and, if consolidated, which judge shall try the issues when the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed.

E. 1. A municipality may enter into an interlocal cooperation agreement with the district court pursuant to the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, to assume jurisdiction of cases involving children under eighteen (18) years of age charged with violating municipal ordinances relating to vandalism, shoplifting, trespassing, assault, battery, assault and battery, truancy, curfews, possession of low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, possession of alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes, disorderly conduct, public intoxication and failure to appear for a court appearance or comply with a court order. For the purposes of this subsection, "district court" shall mean the district court judicial district or districts in which the contracting municipality is situated. The chief juvenile judge of the district court judicial district is hereby authorized to enter into the interlocal cooperation agreement as provided for in this section for and on behalf of said judicial district. Provided, if there is no chief juvenile judge in the judicial district, then the presiding judge of the judicial administrative district that includes the contracting

judicial district may enter into the agreement for and on behalf of said judicial district.

2. Notwithstanding any other provision of this title, a child under eighteen (18) years of age who is taken into custody for the alleged violation of a municipal ordinance relating to one or more of the offenses listed in paragraph 1 of this subsection, and who can be prosecuted in municipal court for such offense pursuant to jurisdiction assumed by the municipal court under paragraph 1 of this subsection, may be temporarily detained by the municipality in a municipal juvenile facility certified by the Oklahoma Commission for Human Services, but only under the following conditions:

- a. the municipality shall immediately take all reasonable steps to attempt to locate the child's parent, legal guardian, legal custodian, or attorney and determine if said parent, legal guardian, legal custodian, or attorney is willing to appear at the municipal juvenile facility and assume personal custody of the child upon the child's release from such facility,
- b. the child shall be released to the personal custody of his or her parent, legal guardian, legal custodian, or attorney as soon as practicable and upon the written promise of such parent, legal guardian, legal custodian, or attorney to return the child to municipal court to answer the municipal charges on the date and at the time set by the municipal court,
- c. the child shall be detained in the municipal juvenile facility for no longer than twenty-four (24) hours; provided, if no parent, legal guardian, legal custodian, or attorney appears at the municipal juvenile facility and assumes personal custody of the child within said twenty-four-hour period, then custody or release of the child shall be determined pursuant to the provisions of Section 1107 of this title,
- d. the child shall not be held in any jail, adult lockup, or adult detention facility unless total separation exists between juveniles and adult spatial areas,
- e. the child shall be provided with adequate fresh drinking water,
- f. the child shall be provided with adequate food not less than three times in a twenty-four-hour period,
- g. the child shall be provided with adequate bathroom facilities and bedding, and
- h. the child shall be provided with any necessary medical care and treatment.

Prior to the temporary detention of any child under authority of this subsection, the municipal juvenile facility shall be certified by the Oklahoma Commission for Human Services under the applicable certification standards set by said Commission, and each member of the staff of the municipal juvenile facility shall have satisfactorily completed a training program provided or approved by the Department of Human Services. In furtherance of this subsection, the Oklahoma Commission for Human Services is directed to and shall establish standards for the certification of municipal juvenile facilities, with said standards to include, but not be limited to, the conditions set forth in subparagraphs a through h, inclusive, of this paragraph, and the Department of Human Services is directed to and shall provide or approve an appropriate training program for staff members of such facilities. In lieu of operating a municipal juvenile facility with trained municipal employees, the municipality may contract with an independent public or private facility properly certified by the Oklahoma Commission for Human Services for performance of the detention services authorized by

this paragraph. For the purposes of this section, a "municipal juvenile facility" shall mean a secure facility entirely separate from any jail, adult lockup, or other adult facility, or spatially separate if contained inside any jail, adult lockup, or other adult facility which is certified by the Oklahoma Commission for Human Services for use for the temporary detention of juveniles as authorized by the provisions of this paragraph. The provisions of this paragraph shall not restrict or limit the use of municipal juvenile facilities for detention of juveniles who are detained pursuant to other provisions of law.

3. Pursuant to an interlocal cooperation agreement between a municipality and the district court, as authorized by paragraph 1 of this subsection, a child under eighteen (18) years of age may be charged, prosecuted and, if convicted, fined for violating such a municipal ordinance relating to one or more of the offenses listed in paragraph 1 of this subsection; provided that the maximum fine which may be imposed shall not exceed the maximum fine authorized by law. When assessing punishment, the court also may require appropriate community service work, not to exceed ninety (90) hours, in lieu of a fine if the product of multiplying the number of hours of community service work by the prevailing minimum wage does not result in a number which exceeds the maximum fine authorized by law, or restitution, or both community service work and restitution. In addition, during any calendar year that any child:

- a. fails to appear for a court date on more than one occasion,
- b. is convicted of two or more of the offenses listed in paragraph 1 of this subsection, which offenses occurred on different days, or
- c. fails to pay any fine or cost properly assessed by a municipal court,

and after the expiration of ninety (90) days, the court clerk shall mail notice of such occurrence to the Department of Public Safety, which department shall thereafter suspend such child's license for six (6) months. The suspension may be modified as provided in Section 754.1 of Title 47 of the Oklahoma Statutes. In addition, the court may require the child to receive counseling or other community-based services, as necessary.

If a child is prosecuted for an offense in a municipal court, the child shall not be prosecuted for the offense in the district court. The municipal court may also impose costs as authorized by law.

4. Any fines and costs properly assessed against any child and which remain unpaid after three (3) months may be assessed by the municipal judge against the child's parent, parents, legal guardian or legal custodian and collected and paid as provided for in Section 27-122 of Title 11 of the Oklahoma Statutes. Provided however, prior to such latter assessment, the court clerk shall give such child's parent, parents, legal guardian or legal custodian notice by certified mail to their place of residence or personal service of such action proposed to be taken. All municipal arrest records, prosecution records, court records, and court proceedings for cases involving children under eighteen (18) years of age charged with violating municipal ordinances relating to one or more of the offenses listed in paragraph 1 of this subsection shall be kept confidential and shall not be open to public inspection except by order of the municipal court or as otherwise provided by Sections 1125 through 1125.4 of this title and Section 620.6 of this title.

F. Funds generated from fines paid pursuant to an interlocal cooperation agreement between a municipality and the district court pursuant to subsection E of this section shall be earmarked and used by the municipality only for the following purposes:

1. To fund local programs which address problems of juvenile crime;

2. To fund the costs of prosecutions authorized pursuant to subsection E of this section;

3. To fund the costs of detention authorized pursuant to subsection E of this section; and

4. To fund administrative costs related to local programs that address problems of juvenile crime or related to the prosecution, detention, or punishment authorized pursuant to subsection E of this section.

Such earmarked funds shall not be used by the municipality for any purpose other than the purposes set forth in paragraphs 1 through 4 of this subsection.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 43-102, is amended to read as follows:

Section 43-102. A. The municipal governing body may divide the municipality into districts of such number, shape and area as it deems suitable in carrying out its powers as to buildings, land and structures. Within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

B. The municipal governing body may enact nondiscriminatory zoning ordinances regulating the location for the sale for consumption on the premises of low-point beer, as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, commonly called 3.2 beer; provided, however, that no special or separate classification shall be created only for businesses selling said product.

C. Nothing in this section shall be construed to apply to telephone exchange buildings.

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 or she is a person of good moral character; that he or she 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 beverage or low-point beer 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. 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 or her 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 21 O.S. 1991, Section 1103, is amended to read as follows:

Section 1103. A judge of the district court, upon five (5) days' notice to the person holding such license, may revoke such license for any one of the following reasons:

1. Drunkenness of the person holding such license or permitting any intoxicated person to loiter in such place.

2. Permitting minors to resort to such place, unless accompanied by parent or guardian.

3. Violating any of the intoxicating beverage or low-point beer laws of the state; or permitting anyone to violate any of these laws in such place.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1190, is amended to read as follows:

Section 1190. A. No student organization or any person associated with any organization sanctioned or authorized by the governing board of any public or private school or institution of higher education in this state shall engage or participate in hazing.

B. Any hazing activity described in subsection F of this section upon which the initiation or admission into or affiliation with an organization sanctioned or authorized by a public or private school or by any institution of higher education in this state is directly or indirectly conditioned shall be presumed to be a forced activity, even if the student willingly participates in such activity.

C. A copy of the policy or the rules and regulations of the public or private school or institution of higher education which prohibits hazing shall be given to each student enrolled in the school or institution and shall be deemed to be part of the bylaws of all organizations operating at the public school or the institution of higher education.

D. Any organization sanctioned or authorized by the governing board of a public or private school or of an institution of higher education in this state which violates subsection A of this section, upon conviction, shall be guilty of a misdemeanor, and may be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00) and the forfeit for a period of not less than one (1) year all of the rights and privileges of being an organization organized or operating at the public or private school or at the institution of higher education.

E. Any individual convicted of violating the provisions of subsection A of this section shall be guilty of a misdemeanor, and may be punishable by imprisonment for not to exceed ninety (90) days in the county jail, or by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.

F. For purposes of this section:

1. "Hazing" means an activity which recklessly or intentionally endangers the mental health or physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating subject to the sanction of the public or private school or of any institution of higher education in this state;

2. "Endanger the physical health" shall include but not be limited to any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, alcoholic beverage as defined in Section 506 of Title 37 of the Oklahoma Statutes, low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, drug, controlled dangerous substance, or other substance, or any other forced physical activity which could adversely affect the physical health or safety of the individual; and

3. "Endanger the mental health" shall include any activity, except those activities authorized by law, which would subject the

individual to extreme mental stress, such as prolonged sleep deprivation, forced prolonged exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1220, is amended to read as follows:

Section 1220. It shall be unlawful for any person to knowingly transport in any moving vehicle upon a public highway, street or alley any intoxicating beverage or low-point beer, as defined by Sections 163.1 and 163.2 of Title 37 of the Oklahoma Statutes, except in the original container which shall not have been opened and from which the original cap or seal shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than Fifty Dollars (\$50.00).

SECTION 8. AMENDATORY 37 O.S. 1991, Section 163.1, is amended to read as follows:

Section 163.1 All beverages containing more than three and two-tenths percent (3.2%) alcohol by weight and all mixed beverage coolers, as defined in Section 506 of this title, regardless of percent of alcoholic content, are hereby declared to be intoxicating. All beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight are hereby declared to be low-point beer. Wherever the term "nonintoxicating beverage" or "nonintoxicating malt beverage" appears in the Oklahoma Statutes, such term shall be construed to mean low-point beer. The manufacture, distribution and sale of low-point beer, including but not limited to beer or cereal malt beverages, are hereby declared subject to the provisions of Section 163.1 et seq. of this title.

SECTION 9. AMENDATORY 37 O.S. 1991, Section 163.2, is amended to read as follows:

Section 163.2 In the administration of Section 163.1 et seq. of this title, the following words and phrases are given the meanings respectively indicated:

1. "Low-point beer" means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products;

2. "Person" means and includes an individual, a trust or estate, a partnership, an association or a corporation;

3. "Manufacturer" means and includes any person who prepares for human consumption by the use of raw materials or other ingredients any low-point beer, as defined herein, upon which a license fee and a tax are imposed by any law of this state;

4. "Wholesaler" means and includes any person who sells any low-point beer, as defined herein, to a licensed retail dealer, as hereinafter defined, for resale;

5. "Retail dealer" means and includes any person who sells any low-point beer, as defined herein, at retail for consumption or use, and such definitions include state and county fair associations, and special licenses may be issued for the sale of low-point beer, as herein defined, by such associations, and to other persons for the sale of such low-point beer at rodeos, picnics, or other organized temporary assemblages of people. The term "retail dealer" also includes railways for the sale of such beverages, and licenses may

be issued for each dining car or railway train, which railways and dining cars shall pay the same license fees as regular retail dealers;

6. "Sale" or "sales", for the purpose of the collection of the taxes imposed by any law of the state upon low-point beer, as defined herein, is hereby defined to mean and include all sales by all wholesalers within this state, for money or any other valuable consideration, to retail dealers for resale; and, also, the term "sale" or "sales" taxable under Section 163.1 et seq. of this title means and includes all sales from manufacturers or wholesalers from outside this state, to retail dealers for resale to consumers or otherwise. The term "sale" or "sales" shall also include sales from manufacturers without the state to wholesalers located within the state;

7. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals"; and

8. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons twenty-one (21) years of age or older are admitted.

SECTION 10. AMENDATORY 37 O.S. 1991, Section 163.3, is amended to read as follows:

Section 163.3 There is hereby levied on all low-point beer containing more than one-half of one percent ($1/2$ of 1%) of alcohol measured by volume and not more than three and two-tenths percent (3.2%) of alcohol measured by weight which are manufactured and sold, or removed for consumption or sale, within this state a tax of Eleven Dollars and twenty-five cents (\$11.25) for every barrel containing not more than thirty-one (31) gallons, and at a like rate of tax for any other quantities or for a fractional part of a barrel.

Each wholesaler making reports and remittances to the Tax Commission shall be allowed the sum of one percent (1%) of the tax remittances collected for maintaining and collecting said tax for the benefit of this state.

Machinery and equipment directly used in the manufacture within this state of low-point beer taxed pursuant to the provisions of this section shall be exempt from taxation under any other law of this state levying a sales or consumers or use tax.

SECTION 11. AMENDATORY 37 O.S. 1991, Section 163.4, as amended by Section 1, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1994, Section 163.4), is amended to read as follows:

Section 163.4 The excise tax levied on low-point beer under Section 163.3 of this title shall be paid by the following:

1. 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 Section 163.1 et seq. of this title;

2. 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 low-point beer upon which the tax provided by Section 163.3 of this title 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 Section 163.1 et seq. of this title, the wholesaler collecting such tax is hereby declared to be the agent of the state for such purposes, and his or her 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; and

3. Retail Dealers. Retail dealers, where the out-of-state manufacturer or wholesaler has paid the tax under the provisions of Section 163.1 et seq. of this title, shall not be required to pay the tax. However, nothing in Section 163.1 et seq. of this title shall operate to relieve any retail dealer from payment of the tax where such retail dealer has at any time in his or her possession or exhibits for sale low-point beer upon which the tax has not been paid. In such case all the provisions of Section 163.1 et seq. of this title 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 Section 163.1 et seq. of this title, shall likewise subject such retail dealer to the penalties and punishments prescribed for other taxpayers. In addition, any retail dealer that manufactures low-point beer for consumption on the licensed premises shall be required to pay the tax.

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

SECTION 12. AMENDATORY 37 O.S. 1991, Section 163.5, is amended to read as follows:

Section 163.5 The excise tax levied by Section 163.3 of this title on low-point beer shall be due and payable on or before the tenth day of each month for the preceding calendar month. At the time of paying such tax each taxpayer shall, upon forms prescribed, prepared and furnished by the Tax Commission, file with the Tax Commission a return, under oath, showing the total sales of such beverages during the preceding calendar month, the amount of taxes due, and such further information as the Tax Commission may require to enable it to compute correctly and collect the taxes levied under Section 163.1 et seq. of this title. Any tax not paid within ten (10) days after the close of the preceding calendar month shall be delinquent.

SECTION 13. AMENDATORY 37 O.S. 1991, Section 163.7, as last amended by Section 1, Chapter 258, O.S.L. 1994 (37 O.S. Supp. 1994, Section 163.7), is amended to read as follows:

Section 163.7 In addition to the excise tax payable under Section 163.1 et seq. of this title, 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 low-point beer; provided, any such permit issued prior to the effective date of this act with respect to nonintoxicating beverages shall be valid until it expires:

1. Manufacturers: Every manufacturer, located and doing business in this state, shall, before commencing the manufacture of low-point beer, 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 Section 163.1 et seq. of this title, 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 low-point beer. 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 Section 163.1 et seq. of this title, shall procure annually a permit and pay annually the license tax required of 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;

2. Wholesalers: Every wholesaler, located and doing business in this state, must annually obtain from the Oklahoma Tax Commission a permit to sell low-point beer. 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 Section 163.1 et seq. of this title, 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 low-point beer 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; and

3. Retail Dealers: Every retail dealer shall, before offering low-point beer 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:

- a. each retail dealer who sells low-point beer, on draught and in original packages, for consumption on or off the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of Three Hundred Dollars (\$300.00),
- b. each retail dealer who sells such beverages in original packages only for consumption on or off the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of One Hundred Fifty Dollars (\$150.00),
- c. each retail dealer who sells low-point beer purchased from a licensed manufacturer or licensed wholesaler for consumption on or off the premises and who sells low-point beer manufactured by said retail dealer for consumption on the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license fee of Four Hundred Fifty Dollars (\$450.00). Provided, a retail dealer licensed pursuant to this subparagraph shall not manufacture more than five thousand (5,000) barrels of low-point beer per year,
- d. 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),
- e. each retail dealer who sells such beverages in original packages and not for consumption on the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of Thirty Dollars (\$30.00). 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 low-point beer to be consumed, in or upon the premises described in such permit,
- f. a permit issued prior to September 1, 1994, shall be valid until it expires. Upon expiration of such permit, the retail dealer to whom such permit was issued may obtain a renewal permit which shall be valid for three (3) years or until expiration of the dealer's sales tax permit, whichever is earlier, after which a renewal permit shall be valid for three (3) years. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the Oklahoma Tax Commission, and
- g. a retail dealer who has obtained a permit pursuant to this paragraph and who ceases to offer low-point beer for sale to the public shall be entitled to receive a refund of the permit fee from the Oklahoma Tax Commission prorated with respect to the amount of time remaining until expiration of the permit. The manner

and prorated refund shall be prescribed by the Oklahoma Tax Commission.

SECTION 14. AMENDATORY 37 O.S. 1991, Section 163.8, as amended by Section 2, Chapter 258, O.S.L. 1994 (37 O.S. Supp. 1994, Section 163.8), is amended to read as follows:

Section 163.8 Prior to applying to the Oklahoma Tax Commission for a permit to engage in the retail sale of low-point beer, the applicant shall first obtain and furnish proof to the Oklahoma Tax Commission of a county permit as required by Section 163.11 of this title. Said proof shall include the effective and expiration dates of the permit. On approval of the application and payment of the license tax imposed by Sections 163.1 through 163.21 of this title, the Oklahoma Tax Commission shall grant the applicant a permit to conduct business in the state. Provided, however, that when a retailer has qualified for and secured a permit to sell low-point beer in original packages only for consumption off the premises and subsequently applies for a permit to sell said beverages on draught and in original packages for consumption on or off the premises, before the expiration of the former permit, the Tax Commission is authorized to credit such retailer with the value of the unused portion of the former permit, prorated in an amount specified by the Oklahoma Tax Commission. The permit must be renewed and the license tax paid thereafter at the expiration of the preceding permit and license tax period.

The permits issued to retail dealers shall not be transferable from one person to another person, but shall be transferable from one location to another location, provided that such transfer is made with the approval of the Tax Commission and the judge of the district court.

Retail dealers shall be required to secure a permit and must pay a license tax for each place of business at which low-point beer is sold. "Place of business" as herein used shall mean each room, bar or other service unit from which low-point beer is served, delivered or otherwise furnished.

Application for the issuance of the initial and renewal permits required and provided for by this section shall be filed with the Tax Commission and must be accompanied by the required license tax payment in the form of cash, cashier's check, bank draft, or money order payable to the Tax Commission. Permits shall be issued and renewed in the discretion of the Tax Commission upon full compliance with the provisions of Section 163.1 et seq. of this title by the applicant. Proof of the issuance of a permit by the district court clerk, including the effective and expiration dates of the permit, shall entitle the applicant to a permit from the Oklahoma Tax Commission and the revocation of any such permit shall be cause for cancellation of the permit issued by the Oklahoma Tax Commission.

SECTION 15. AMENDATORY 37 O.S. 1991, Section 163.9, is amended to read as follows:

Section 163.9 Any person who operates as a retail low-point beer dealer at any time, without having applied to the Commission for an effective permit, may be required to secure a permit and pay the license tax for the balance of the license year from the date on which he or she began operating, and in this event, shall be required to pay fifty cents (\$0.50) for each day which he or she operated before applying for a license; provided the first fifteen (15) days of such delinquency shall be exempt from the fifty-cent-per-day penalty, and provided the total penalty shall not exceed the amount of the license fee for the license which is required. Provided, further, that the said fifty-cent-per-day penalty shall apply likewise to an original applicant and the applicant for a renewal permit and, provided, further, the total penalty shall not exceed the amount of the license fee for the license which is required in case where license is ultimately issued. Any person who

operates as such dealer who has applied for a permit but which said permit is ultimately rejected by the Oklahoma Tax Commission, shall each be liable to the Oklahoma Tax Commission for One Dollar (\$1.00) per day for each day of such unauthorized operation, said penalty to be paid on demand of the Oklahoma Tax Commission, and in case of an operator who has applied for a permit, but has been refused, the amount or so much thereof as is necessary of the advanced license fee paid by such applicant, shall be retained by the Oklahoma Tax Commission and applied on the penalty, the remainder of said penalty, if any, to be collected as in case of delinquent tax. In case the penalty is not equal to the amount of money deposited in advance, then the balance shall be refunded to the applicant.

SECTION 16. AMENDATORY 37 O.S. 1991, Section 163.10, is amended to read as follows:

Section 163.10 No tax, license fee, or charge upon the distribution, possession, or handling of low-point beer, as defined by Section 163.2 of this title, shall be levied or collected by any political subdivision of this state, except the sales tax, the general ad valorem tax, and the county low-point beer permit fee. Municipal corporations may require the payment of an annual license fee of not more than Twenty Dollars (\$20.00) from retail dealers, as defined by Section 163.2 of this title, selling low-point beer for consumption on or off the premises, and an annual license fee of not more than Ten Dollars (\$10.00) from retail dealers, as defined by Section 163.2 of this title, selling said beverages in original packages and not for consumption on the premises.

SECTION 17. AMENDATORY 37 O.S. 1991, Section 163.11, as last amended by Section 1 of Enrolled Senate Bill No. 123 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 163.11 A. It shall be unlawful for any person to maintain or operate any place where low-point beer, as herein defined, is sold for consumption on or off the premises without first securing a permit issued by the district court clerk of the county in which the premises are located.

B. The person applying for a permit must make a showing every three (3) years, and must satisfy the district court clerk that he or she is a person of good moral character and that he or she 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 this state, or of any other state of the United States, within three (3) years immediately preceding the date of his or her petition, or any of the laws commonly called "Prohibition Laws", or had any permit or license to sell low-point beer revoked in any county of this state within twelve (12) months.

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

D. A fee of One Hundred Fifty Dollars (\$150.00) shall be charged for the issuance or renewal of such three-year permit, which fee shall be deposited in the county court fund, in addition to other fees required by law.

E. Upon petition being filed, the district court clerk shall give fifteen (15) days' notice for an initial application, and it is the applicant's responsibility to cause the same to be posted by the entrance on the front of the building in which said low-point beer is to be sold and to file proof of posting in such case; 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. The initial permit shall be valid for a period of three (3) years and shall expire if not renewed with proper showing required by subsection B of this section, and upon payment of proper fees. A permit may be renewed within ten (10) days of expiration, upon proper application pursuant to subsection B of this section and payment of the proper fees, but without the payment of any late fees. Provided, however, that if a proper application under subsection B of this section is filed within eleven (11) days but not more than thirty (30) days after the expiration date of the permit, upon payment of a fee of One Hundred Dollars (\$100.00) in addition to the initial permit fee, the court clerk is authorized to treat said application as one for renewal and to issue a renewal permit to the applicant, if all requirements have otherwise been met by the applicant. A renewal permit granted during the thirty-day grace period shall become effective upon the date of its issuance by the court clerk.

F. A permit issued prior to September 1, 1994, shall be valid until it expires and shall be renewed for a period of three (3) years or until expiration of the sales tax permit issued by the Oklahoma Tax Commission, if any, held by the person at the time of such renewal, whichever is earlier. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the court clerk.

G. A person who has obtained a permit pursuant to this section and who ceases to maintain or operate any place where low-point beer is sold for consumption on or off the premises shall be entitled to receive a refund of the permit fee from the district court clerk prorated with respect to the amount of time remaining until expiration of the permit. The manner and prorated refund shall be prescribed by the Administrative Director of the Courts.

H. 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.

I. 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.

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

K. 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 or her place of business;

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

3. The sale to any person under twenty-one (21) years of age of low-point beer;

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 low-point beer 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 Section 163.1 et seq. of this title 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 Section 163.1 et seq. of this title;

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; or

8. 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.

L. After the revocation of any such permit, for any of the above reasons, except paragraph 5 of subsection K of this section 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.

M. 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 18. AMENDATORY 37 O.S. 1991, Section 163.11A, as amended by Section 4, Chapter 258, O.S.L. 1994 (37 O.S. Supp. 1994, Section 163.11A), is amended to read as follows:

Section 163.11A A. Every person applying to a district court clerk of this state for a permit to sell low-point beer at retail, as provided for in Section 163.11 of this title, shall by affidavit at the time of applying for said permit and by such further proof as the district court clerk may require, make the following proof:

1. Noncorporate Persons. That each applicant for a permit or other individual who has a beneficial interest in the business for which permit is sought, has for at least one (1) year next preceding the filing of the application maintained a bona fide residence in the State of Oklahoma, and is at the time of making said application maintaining and actually residing in a residence in the county or adjoining county in which said application is made; and

2. Corporate Persons. That such corporations are duly authorized to transact business in the State of Oklahoma, and that the agent or employees managing or in charge of the place of business for which the permit is sought is maintaining and residing in a residence located in said county, or adjoining county, and that such corporation consents that any and all notices required to be served under the provisions of Section 163.1 et seq. of this title may be served on such resident agent or employee.

B. Renewal permits may be granted to corporations which have undergone a name change after the initial permit was granted, provided that the new corporation's affidavit and application demonstrate that the corporation has retained the same officers, and that it is otherwise the same corporation which received the initial permit, in addition to payment of proper fees. The initial permits issued to noncorporate persons which have changed legal identities or entities may be renewed upon proper application demonstrating that the identity of the renewal permit holder is the same as that sought to be renewed, and that the business address is the same, in addition to payment of proper fees.

SECTION 19. AMENDATORY 37 O.S. 1991, Section 163.12, is amended to read as follows:

Section 163.12 Every wholesaler, as herein defined, after applying for a license and before the same is issued by the Tax Commission, shall file with said Commission a surety or collateral or cash bond in such amount as the Commission may prescribe in an amount of not less than One Thousand Dollars (\$1,000.00), nor more than Ten Thousand Dollars (\$10,000.00) payable to the State of Oklahoma, and conditioned upon compliance with the provisions of the laws of this state relating to the sale of low-point beer, as herein defined, and the rules and regulations of the Oklahoma Tax Commission.

Provided that the Oklahoma Tax Commission after an examination of the books and records, and an inventory of the stock on hand of any wholesaler, may demand an additional bond of such wholesaler in any amount that in the opinion of said Commission is necessary to properly protect the Commission in the collection of the tax herein levied, provided, that said additional bond shall not exceed the sum of Fifteen Thousand Dollars (\$15,000.00). If said additional bond is not posted with the Oklahoma Tax Commission within ten (10) days after notice in writing to the wholesaler, to be served in person or by registered mail addressed to wholesaler at the address of his or her principal place of business, the Tax Commission may, in its discretion, cancel the license of said wholesaler without further notice, and at the same time declare all taxes levied under Section 163.1 et seq. of this title to be immediately due and payable upon all beverages not sold and in the hands of such wholesaler.

In cases where retail dealers, as herein defined, are liable for the payment of the taxes imposed by any law of the state upon the sale of low-point beer, as herein defined, on account of purchases from without the state, or otherwise, where the tax is not paid by the wholesaler or manufacturer, upon demand of the Oklahoma Tax Commission, such retail dealer, as defined herein, shall likewise file with the Tax Commission a surety bond in an amount of not less than One Thousand Dollars (\$1,000.00), payable to the State of Oklahoma and conditioned upon compliance with the provisions of the laws of this state relating to the sale of low-point beer, as herein defined, and the rules and regulations of the Oklahoma Tax Commission.

SECTION 20. AMENDATORY 37 O.S. 1991, Section 163.14, as amended by Section 3, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1994, 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. 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 .

C. Each and every retail dealer shall keep accurate records of all sales of low-point beer, whether purchased or manufactured 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 21. AMENDATORY 37 O.S. 1991, Section 163.15, is amended to read as follows:

Section 163.15 It shall be unlawful for any manufacturer, wholesaler or retail dealer of low-point beer, as herein defined, who has in his or her possession, displays or exhibits for sale, sells or transports or causes to be transported, within this state, any low-point beer as herein defined, in violation of any of the provisions of Section 163.1 et seq. of this title or any other law of the state relating to the sale of such low-point beer; and all such low-point beer found in the possession of any such person shall be subject to confiscation and destruction in an action brought in the name of the State of Oklahoma, on relation of district attorney of the county in which said place of business is operated, or in which said low-point beer is found, in the same manner as liquors purchased in violation of laws of the state relating to the purchase, transportation or sale of intoxicating liquors, and the procedure therein provided shall be followed, as nearly as may be practicable, by the district attorney in the enforcement of the provisions of Section 163.1 et seq. of this title.

The State of Oklahoma on relation of the district attorney, is hereby authorized to institute legal action, in any court of competent jurisdiction, against the owner or operator of any automobile, truck or other means of transportation of any low-point beer, as herein defined, who may be in violation of any of the laws of the state relating to the transportation of such beverages, or the identification of such trucks or other means of transportation, or the provisions relating to invoices; and such legal proceedings shall subject any such automobile, truck or other means of transportation so used to confiscation and sale, according to the same procedure now provided by the laws of the State of Oklahoma for sale of vehicles used in violation of such laws prohibiting the possession, transportation or sale of intoxicating liquors.

It shall be the duty of the district attorneys of the respective counties of the state to enforce the provisions of this section, and authority is hereby conferred upon said district attorneys to maintain any suit necessary therefor, in the name of the State of Oklahoma on relation of such district attorneys.

SECTION 22. AMENDATORY 37 O.S. 1991, Section 163.16, is amended to read as follows:

Section 163.16 Any license issued to a wholesaler or retail dealer, as defined herein, may be refused or revoked by the Oklahoma Tax Commission upon ten (10) days' notice in writing to such wholesaler or retail dealer, and after opportunity to be heard before the said Commission for any of the following reasons:

1. The refusal by the judge of the district court to issue any permit to a retail dealer, or the cancellation by the judge of the district court of the county permit of any retail dealer;

2. Nonpayment of delinquent tax, license fee or permit fees or penalties;

3. Possession or display for sale by any retail dealer of low-point beer, as herein defined, upon which the tax imposed by any law of this state shall not have been paid;

4. Failure on the part of any wholesaler or retail dealer to comply with all laws, or the regulations prescribed by the Oklahoma Tax Commission pursuant thereto relating to the enforcement duties imposed upon the Oklahoma Tax Commission by Section 163.1 et seq. of this title.

In any case, before a revocation of license by the Commission, any licensee shall be given ten (10) days' notice in writing and an opportunity to be heard shall be afforded, after which order of revocation may be issued by the Oklahoma Tax Commission, and the same shall thereupon become final; except, that no notice or hearing shall be required in case of a revocation by the Oklahoma Tax Commission after county permit has been revoked by the judge of the

district court or application for renewal of county permit shall have been refused by the judge of the district court.

SECTION 23. AMENDATORY 37 O.S. 1991, Section 163.18, is amended to read as follows:

Section 163.18 A. Every wholesaler of low-point beer, as defined by Section 163.1 et seq. of this title, whether acting for himself or herself or for some other person, who sells such beverages for transportation by railroad or other common carrier, or truck or other vehicle, for transportation from any point within this state to any other point within this state for delivery to a duly-licensed retail dealer, shall deliver to such purchaser of the same an invoice covering each purchase, which invoice shall accurately describe the cargo as to quantity, and shall show the date of sale or delivery, the name, location and Tax Commission number of the wholesaler, the name, location and Tax Commission number of the purchaser, the quantity and description of the cargo, the amount of tax thereon and by whom paid. Every invoice must be identified by consecutive numbers printed on the invoices and every wholesaler must account for each copy of the invoice and each number thereof. Every wholesaler must retain one copy of each invoice as a part of the permanent records of such wholesaler for a period of at least three (3) years.

B. Every person who purchases or receives low-point beer, as defined herein, within this state, and transports the same, or causes the same to be transported, from any point within this state to any other point within this state, by railroad or other common carrier, or by truck or other vehicle, must, at all times, while such beverages are in transit, have in his or her possession or in the possession of the carrier or deliverer thereon, an invoice of the load being transported, properly describing the cargo as to quantity, and showing the amount of tax thereon to have been paid, and by whom paid. Such person must retain each invoice at the location for which the low-point beer permit was issued and such invoices must be retained by the retail dealer as a part of his or her permanent records for a period of at least three (3) years.

C. Every person who shall purchase, accept or receive, for himself or herself or any other person, any such low-point beer, shall, at the time of delivery or acceptance of such beverages, demand and receive the statement or invoice specified in subsections A and B of this section.

D. Each and every truck or other vehicle or conveyance used in the transportation of low-point beer, as defined by Section 163.1 et seq. of this title, on or over the roads and highways in this state, except common carrier in the state, and carriers in interstate commerce, and purchasers at retail, as defined in subsection H of this section, must have painted on both front and rear ends of each vehicle, in a conspicuous position, where it may easily be seen and read, in letters and figures at least four (4) inches high, the wholesaler's or retail dealer's license number, preceded by the initials "O.T.C. Bev.". If a trailer unit is attached, the foregoing initials and number must be painted on the rear end of the last unit.

E. If any wholesaler or retail dealer, as hereinabove described, causes to be transported, as hereinabove stated, any such low-point beer, or any private carrier or other person employed by such wholesaler or retail dealer, such private carrier or other person shall place upon the truck or the conveyance used, the license number and "O.T.C. Bev." marking of such wholesaler or retail dealer, as hereinabove provided, which provisions, and the provisions relating to invoices, shall apply to such private carrier or other person, who, for the purposes of Section 163.1 et seq. of this title, shall be the agent of such wholesaler or retail dealer.

F. Any person or persons violating any of the provisions of subsection A, B, C, D or E of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by a term in jail of not exceeding one (1) year, or by both such fine and imprisonment. The venue for any prosecution arising under this section shall be in the district court of any county in which any of said crimes are committed.

G. Any person within the State of Oklahoma, while acting for himself or herself or who aids or abets any other person, in purchasing, selling, transporting, delivering or using, any low-point beer, as defined in Section 163.1 et seq. of this title, within the State of Oklahoma, with the intent and purpose of evading or avoiding the payment of the tax on such beverage imposed by law of the state, shall be guilty of a misdemeanor, and upon conviction shall be punished therefor as provided in subsection F of this section.

H. The provisions of this section, relating to the marking of trucks or other vehicles conveying such low-point beer, shall not be construed to apply to manufacturers or wholesalers delivering beverages from without the state to points within the state, nor to common carriers engaged in shipping such beverages in, into or through the state, in interstate commerce, nor to a purchaser at retail of low-point beer upon which the tax has been paid.

I. Common carriers transporting low-point beer, as defined by law, to points within the State of Oklahoma, shall furnish monthly reports to the Tax Commission showing the point of origin, the consignor, consignee, the date, and the amount of each shipment or consignment of such beverages so transported. Failure of any common carrier to comply with this provision shall be deemed a misdemeanor, and upon conviction thereof shall be punished for a misdemeanor as provided for under the general statutes of this state.

SECTION 24. AMENDATORY Section 1, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18A), is amended to read as follows:

Section 163.18A A. In order to provide for regulation of the sales and distribution of low-point beer, as defined in Section 163.2 of this title, in this state, the Legislature hereby declares it is necessary to implement the provisions of the Low-Point Beer Distribution Act. Sections 163.18A through 163.18H of this title shall be known and may be cited as the " Low-Point Beer Distribution Act".

B. Statutory regulation of the sales and distribution of designated brands in designated territories by wholesalers shall include, but not be limited to:

1. A requirement for written agreements between a manufacturer and wholesaler designating a specific territory within which the wholesaler may sell the designated brands of the manufacturer;

2. Provisions for prohibited acts applicable to the wholesaler and manufacturer; and

3. Provisions for penalties for violations of the provisions of the Low-Point Beer Distribution Act.

SECTION 25. AMENDATORY Section 2, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18B), is amended to read as follows:

Section 163.18B Every manufacturer of low-point beer licensed by the Oklahoma Tax Commission authorizing the licensee to sell its low-point beer in this state shall:

1. Enter into an agreement with a licensed wholesaler to sell the designated brands of the licensed manufacturer which designates the sales territory of that licensed wholesaler and the designated brands to be sold by the licensed wholesaler. All such agreements

shall specifically authorize the sale of the designated brands by a licensed wholesaler within that sales territory;

2. Sell its registered and approved designated brands only to a licensed wholesaler with whom that licensed manufacturer has an agreement designating the sales territory of the licensed wholesaler and the designated brands to be sold by the licensed wholesaler;

3. Authorize only one licensed wholesaler for each designated sales territory. Such licensed wholesaler shall be the only licensed wholesaler for the designated brands of the authorizing licensed manufacturer within that designated sales territory; and

4. Designate who is responsible for the distribution of its designated brands.

SECTION 26. AMENDATORY Section 3, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18C), is amended to read as follows:

Section 163.18C In order to regulate distribution of low-point beer in this state, and assure collection of all applicable taxes and fees, all low-point beer sold in this state by a licensed wholesaler shall only be transported within this state to the licensed address and location of a licensed retailer or between the licensed addresses and locations of licensed retailers by a marked conveyance owned or leased by a licensed wholesaler.

SECTION 27. AMENDATORY Section 4, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18D), is amended to read as follows:

Section 163.18D A. A licensed wholesaler designated as the licensed wholesaler for a low-point beer within a designated sales territory shall present that low-point beer for sale to all licensed retailers within the designated sales territory without discrimination. A licensed wholesaler shall not sell, supply, or deliver either directly or indirectly through a third party, a low-point beer to a licensed retailer outside of the designated sales territory of the designated wholesaler, nor to any person the licensed wholesaler has reason to believe will sell or supply any quantity of the low-point beer to any retail location outside of the designated sales territory of the designated wholesaler.

B. All low-point beer shall only be transported by a marked conveyance owned or leased by the licensed wholesaler and operated by the licensed wholesaler or an employee of the wholesaler for the products of a licensed manufacturer within the designated sales territory to the address and location of a licensed retail dealer within that designated sales territory.

C. Any low-point beer sold by the licensed wholesaler shall not be delivered to, received by, or stored at any place other than the address and location of the licensed retailer for which state and local retail dealer licenses and permits have been issued.

D. With the approval of the licensed manufacturer, a licensed wholesaler may sell the designated brands to a licensed retailer located in a designated sales territory of another licensed wholesaler if that licensed wholesaler is temporarily unable for any reason to provide the designated brands of the licensed manufacturer within its designated sales territory.

E. All low-point beer purchased by a licensed wholesaler for resale in this state shall physically come into the possession of the licensed wholesaler and be unloaded in and distributed from the licensed warehouse of the licensed wholesaler located in this state, prior to being resold in this state.

SECTION 28. AMENDATORY Section 5, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18E), is amended to read as follows:

Section 163.18E A licensed manufacturer may terminate, cancel, or refuse to continue to provide designated brands pursuant to a designated sales territory agreement with any licensed wholesaler

who has sold low-point beer supplied by that licensed manufacturer in violation of the provisions of the Low-Point Beer Distribution Act. Such termination, cancellation, or refusal to supply shall be effective immediately upon receipt of written notification by the offending licensed wholesaler.

SECTION 29. AMENDATORY Section 7, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18G), is amended to read as follows:

Section 163.18G Any aggrieved person shall have a cause of action for violations of the provisions of the Low-Point Beer Distribution Act and may recover damages or obtain injunctive relief or both.

SECTION 30. AMENDATORY Section 8, Chapter 140, O.S.L. 1993 (37 O.S. Supp. 1994, Section 163.18H), is amended to read as follows:

Section 163.18H A. In addition to any other powers conferred on the Oklahoma Tax Commission to impose penalties for violations of Sections 163.1 through 163.25 of this title, whenever in the judgment of the Commission any person has committed an act which constitutes a violation of the Low-Point Beer Distribution Act, the Commission may:

1. After notice and hearing, issue a cease and desist order to any person that is licensed as a manufacturer or wholesaler;

2. Impose a fine of not more than Five Thousand Dollars (\$5,000.00) for each violation in the event that after the issuance of an order to cease and desist the illegal activity, the person that the order is directed to commits any act in violation of the order; and

3. Make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Commission that such violations have occurred, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court, without bond.

B. Each day a violation is continuing shall constitute a separate offense.

C. Administrative fines imposed pursuant to the provisions of this section shall be enforceable in the district courts of this state.

D. All administrative fines collected by the Commission pursuant to the provisions of this section shall be forwarded to the State Treasurer for deposit in the General Revenue Fund.

E. Any manufacturer or wholesaler injured by a violation of the Low-Point Beer Distribution Act may:

1. Bring an action for recovery of damages. Judgment shall be entered for actual damages plus reasonable attorney's fees and costs; and

2. Bring an action to restrain and enjoin the violation of the Low-Point Beer Distribution Act.

SECTION 31. AMENDATORY 37 O.S. 1991, Section 163.19, is amended to read as follows:

Section 163.19 A. No low-point beer, as herein defined, may be sold by any licensed wholesaler or retail dealer, unless a label or other device is affixed or attached to each bottle, keg, or other container from which such beverage is immediately consumed or served, bearing the trade name of such beverage and the name and address of the manufacturer thereof. No retail dealer shall sell or dispense any beverage, as defined herein, from draught or in bulk, and not in the manufacturer's original container, unless each faucet, draught arm, or other dispensing apparatus is equipped with a sign clearly indicating the name of brand of the beverage being at the time dispensed through or by means of such faucet, draught arm, or other apparatus, and which sign shall be in legible lettering and in full sight of the purchaser.

B. No person shall :

1. Transfer to any bottle, keg, or other container, any label originally attached to any bottle, keg, or other container as required by subsection A of this section;

2. Print, use, utter, or attach to any such container any false label or descriptive device in imitation of or substitute for such label or device;

3. Attach to any container of any substitute for any such beverage, as defined, by Section 163.1 et seq. of this title, the trade name or label of any manufacturer or wholesaler; or

4. Attach to any container of such beverage any label or device which misrepresents the contents of such container or in any manner indicates the alcoholic content of said beverage or which by wording, lettering, numbering or illustration, or in any manner carries any reference, allusion, or suggestion as to the alcoholic strength of such beverage in excess of three and two-tenths percent (3.2%) by weight, or upon which appears any such word or combination of words, or abbreviations thereof, as "strong", "full strength", "high test", "high proof", "prewar strength", "full old-time alcoholic strength", or any words or figures or other marks or characters alluding or referring to "proof", "balling", or "extract" contents of the beverage, or which bears a label that is untrue in any particular, or which directly, or by ambiguity, omission, or inference tends to create a misleading impression or causes or is reasonably calculated to cause deception of the consumer or purchaser with respect to such beverage.

C. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed One Thousand Dollars (\$1,000.00), or imprisoned in the county jail not exceeding one (1) year or shall be punished by both such fine and imprisonment.

SECTION 32. AMENDATORY 37 O.S. 1991, Section 163.20, is amended to read as follows:

Section 163.20 Any person who shall engage in the sale of low-point beer in violation of the provisions of Section 163.1 et seq. of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for such misdemeanor as provided for by the general statutes of this state.

SECTION 33. AMENDATORY 37 O.S. 1991, Section 163.22, is amended to read as follows:

Section 163.22 No manufacturer of low-point beer, as defined by Section 163.2 of this title, may sell or offer for sale in this state any low-point beer as so defined, at prices higher than the lowest price at which the specific, or comparable, item is being currently sold or offered for sale to any wholesaler anywhere in any state which adjoins the State of Oklahoma.

SECTION 34. AMENDATORY 37 O.S. 1991, Section 163.24, as amended by Section 26, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 163.24), is amended to read as follows:

Section 163.24 It shall be unlawful for any place licensed to sell low-point beer as defined in Section 163.2 of this title, for on-premises consumption to be located within three hundred (300) feet from any public school or church property primarily and regularly used for worship services and religious activities. Provided, if any public school or church shall be established within three hundred (300) feet of any place which sells low-point beer for on-premises consumption after such place has been licensed, this shall not be a deterrent to the renewal of such license so long as there has not been a lapse of more than sixty (60) days.

When any place which has a permit to sell low-point beer for on-premises consumption changes ownership and such change of ownership results in the same type of business being conducted on the premises, the prohibition of this section shall not be a deterrent

to the issuance of a permit to the new owner, if otherwise qualified to sell low-point beer for on-premises consumption.

The distance indicated in this section shall be measured from the nearest property line of such public school or church to the nearest public entrance door of the premises of any place licensed to sell such low-point beer for on-premises consumption along the street right-of-way line providing the nearest direct route usually traveled by pedestrians between such points. For purposes of determining measured distance, property situated on the opposite side of the street from such public school or church shall be considered as if it were located on the same side of the street with the school or church. Provided further, the above restrictions shall not affect premises already licensed to sell low-point beer for on-premises consumption or premises which may presently or in the future be licensed to sell low-point beer for on-premises consumption even though a school or church is subsequently established within three hundred (300) feet of such licensed premises.

If an establishment selling low-point beer also is the holder of a mixed beverage or beer and wine license issued by the Alcoholic Beverage Laws Enforcement Commission, the establishment shall be subject to the zoning provisions of Section 518.2 of this title rather than the provisions of this section.

SECTION 35. AMENDATORY 37 O.S. 1991, Section 163.25, is amended to read as follows:

Section 163.25 No retail license or permit to sell low-point beer shall be issued for any establishment that functions as a motion picture theater. If an establishment, which has functioned for some other purpose, has been licensed to sell such beverages and subsequently is operated as a motion picture theater, the license or permit shall be revoked.

SECTION 36. AMENDATORY 37 O.S. 1991, Section 213.1, is amended to read as follows:

Section 213.1 A. No owner, operator, partner, manager, or person having supervisory control of any establishment licensed to sell low-point beer shall permit any of the following on or about any commercial premises where low-point beer is dispensed or consumed:

1. The performance by any person of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are otherwise prohibited by law;

2. The actual intentional touching or caressing or fondling by any person of the breasts, anus or genitals;

3. Any person on the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, buttocks or genitals; or

4. Any person to perform acts of, or acts which simulate, sexual acts which are prohibited by law, or permit any person to use artificial devices or inanimate objects to depict any prohibited activities or permit the showing of films, still pictures, electronic reproductions or other visual reproductions depicting any of the prohibited activities described in this paragraph.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each act in violation of any provision of this section shall be deemed a separate offense. Conviction for the violation of the provisions of this section shall be sufficient grounds for revocation by the judge of the district court of any license held by such person authorizing the sale of low-point beer or intoxicating beverages.

SECTION 37. AMENDATORY 37 O.S. 1991, Section 213.2, is amended to read as follows:

Section 213.2 A. No owner, operator, partner, manager, or person having supervisory control of any establishment that permits any person on the premises who is unclothed or in such attire, costume, or clothing as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, buttocks or genitals, shall permit low-point beer, as defined by Section 163.2 of this title, on or about the premises.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each act in violation of this section shall be deemed a separate offense.

SECTION 38. AMENDATORY 37 O.S. 1991, Section 231, as amended by Section 4, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1994, Section 231), is amended to read as follows:

Section 231. A. 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 low-point beer, 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 low-point beer;

2. Acquire, hold, or own any interest in the real or personal property owned, occupied, or used by a retail dealer in low-point beer in the conduct of his or her business;

3. Furnish, give, rent, lend, or sell to a retail dealer in low-point beer 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 low-point beer;

4. Pay or credit a retail dealer in low-point beer 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 low-point beer;

6. Extend credit to a retail dealer in low-point beer;

7. Offer or give any bonus, premium, or compensation to an officer, employee, associate, relative, or representative of a retail dealer in low-point beer;

8. Sell, offer for sale, or contract to sell to any retail dealer in low-point beer any low-point beer 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 low-point beer; or

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

B. The provisions of this section shall not preclude a retail dealer from manufacturing low-point beer for consumption on the licensed premises of the retail dealer.

SECTION 39. AMENDATORY 37 O.S. 1991, Section 233, is amended to read as follows:

Section 233. The provisions of Section 231 et seq. of this title shall apply to the business of dealing in low-point beer only, and if any section, sentence, subdivision, or clause hereof shall

for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of Section 231 et seq. of this title.

SECTION 40. AMENDATORY 37 O.S. 1991, Section 241, is amended to read as follows:

Section 241. A. It shall be unlawful for any person to sell, barter, or give to any person under twenty-one (21) years of age any low-point beer, as defined in Section 163.2 of this title.

B. It shall be unlawful for any person who holds a license to sell and dispense low-point beer for consumption on the premises, or any agent, servant, or employee of said license holder, to permit any person under twenty-one (21) years of age to be admitted to or remain in a separate or enclosed bar area of the licensed premises unless said person's parent or legal guardian is present, which has as its main purpose the selling or serving of low-point beer for consumption on the premises. The provisions of this section shall not prohibit persons under twenty-one (21) years of age from being admitted to an area which has as its main purpose some objective other than the sale or serving of low-point beer, in which sales or serving of said beverages are incidental to the main purpose, as long as persons under twenty-one (21) years of age are not sold or served said beverages; however, the incidental service of food in the bar area shall not exempt a licensee, agent, servant, or employee from the provisions of this section.

C. It shall be unlawful for any person who holds a license to sell and dispense low-point beer, for consumption on the premises, or any agent, servant or employee of said license holder to permit any person under twenty-one (21) years of age to consume any low-point beer on the licensed premises.

D. Any person violating the provisions of subsection A, B or C of this section shall upon conviction be guilty of a misdemeanor.

SECTION 41. AMENDATORY 37 O.S. 1991, Section 243, is amended to read as follows:

Section 243. A. It shall be unlawful for any person under eighteen (18) years of age to be employed or permitted to work, in any capacity whatsoever, in a place where low-point beer is sold or dispensed for consumption on the premises.

B. It shall be unlawful for any person under the age of majority to be employed or permitted to work, in any capacity whatsoever, in the separate or enclosed bar area of a place where the main purpose of the area is the sale or consumption of low-point beer. The provisions of this subsection shall not apply to any area which has as its main purpose some objective other than the sale or serving of low-point beer, in which sales or serving of said beverages are incidental to the main purpose; however, the incidental service of food in the bar area shall not exempt a holder of a license to sell low-point beer for consumption on the premises from the provisions of this subsection.

C. A parent as regards the employment of his or her own child or children is excepted from the provisions of this section, provided that such employment shall in no capacity whatsoever be related to the selling or dispensing of such beverages.

D. The provisions of subsection A of this section shall not apply to any business or establishment where sales of said beverages do not exceed twenty-five percent (25%) of the gross sales of the business or establishment.

SECTION 42. AMENDATORY 37 O.S. 1991, Section 244, is amended to read as follows:

Section 244. A. The violation by any person of the provisions of Sections 241 or 243 of this title or any statute pertaining to the sale of low-point beer, as defined in Section 163.2 of this title, shall be sufficient ground for revocation by the judge of the district court of any permit held by such person authorizing the

sale of low-point beer. No new permit shall be issued to such person or to a relative of such person for a period of twelve (12) months after such revocation.

B. Each holder of a retail license or permit to sell and dispense low-point beer, as defined in Section 163.2 of this title, shall be held responsible for any violation of Section 241 or 243 of this title committed by a servant, agent, employee or representative of the license or permit holder.

SECTION 43. AMENDATORY 37 O.S. 1991, Section 246, is amended to read as follows:

Section 246. A. No person under twenty-one (21) years of age shall consume or possess with the intent to consume low-point beer, as defined in Section 163.2 of this title, in any public place. It shall be unlawful for any person under twenty-one (21) years of age to purchase or attempt to purchase low-point beer, as defined in Section 163.2 of this title, except under supervision of law enforcement officers. Any person violating any of the provisions of this section shall be guilty, upon conviction, of a misdemeanor and punished by a fine not to exceed One Hundred Dollars (\$100.00) or by appropriate community service not to exceed twenty (20) hours. Provided, the provisions of this section shall not apply when such persons are under the direct supervision of their parent or guardian, but in no instance shall this exception be interpreted to allow such persons to consume such beverages in any place licensed to dispense low-point beer as provided in Section 163.11 of this title.

B. If the premises of a holder of a license to sell low-point beer contains a separate or enclosed bar area which has as its main purpose the sale or serving of low-point beer for consumption on the premises, no person under twenty-one (21) years of age shall enter, attempt to enter, or remain in said area. The provisions of this subsection shall not prohibit persons under twenty-one (21) years of age from entering or remaining in an area which has as its main purpose some objective other than the sale or serving of low-point beer, in which sales or serving of said beverages are incidental to the main purpose, if the persons under twenty-one (21) years of age are not sold or served or do not consume low-point beer anywhere on the premises; however, the incidental service of food in the bar area shall not exempt persons under twenty-one (21) years of age from the provisions of this subsection. Any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and punished by a fine not to exceed One Hundred Dollars (\$100.00).

C. A violation of the provisions of this section shall not be a basis for instituting juvenile proceedings to determine if a person under eighteen (18) years of age is a delinquent child; however, if a person under eighteen (18) years of age habitually violates the provisions of this section, juvenile proceedings may be brought to determine if the person is a delinquent child. A person under eighteen (18) years of age who has been convicted of violating the provisions of this section shall be subject to the penalty provisions provided in this section.

SECTION 44. AMENDATORY 37 O.S. 1991, Section 506, as amended by Section 2, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 506), is amended to read as follows:

Section 506. When used in the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, the following words and phrases shall have the following meaning:

1. "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission;

2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or

alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder;

3. "Alcoholic beverage" means alcohol, spirits, beer, and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings, but does not include low-point beer as that term is defined in Section 163.2 of this title;

4. "Beer" means any beverage containing more than three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine;

5. "Bottle club" means any establishment in a county which has not authorized the retail sale of alcoholic beverages by the individual drink, which is required to be licensed to keep, mix, and serve alcoholic beverages belonging to club members on club premises;

6. "Brewer" means any person who produces beer in this state;

7. "Class B wholesaler" means and includes any person doing any such acts or carrying on any such business that would require such person to obtain a Class B wholesaler license hereunder;

8. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof;

9. "Director" means the Director of the Alcoholic Beverage Laws Enforcement Commission under the supervision of said Commission;

10. "Distiller" means any person who produces spirits from any source or substance, or any person who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation), or any person who by any process separates alcoholic spirits from any fermented substance, or any person who, making or keeping mash, wort, or wash, has also in his or her possession or use a still;

11. "Hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial;

12. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

13. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises;

14. "Light beer" means a low-point beer controlled under this title;

15. "Light wine" means any wine containing not more than fourteen percent (14%) alcohol measured by volume at sixty (60) degrees Fahrenheit;

16. "Manufacturer's agent" means a salaried or commissioned salesman who sells to a wholesaler or Class B wholesaler only;

17. "Manufacturer" means a brewer, distiller, winemaker, rectifier, or bottler of any alcoholic beverage;

18. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals";

19. "Mini-bar" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee;

20. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include, but not be limited to, the beverage popularly known as a "wine cooler";

21. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license;

22. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons over twenty-one (21) years of age are admitted;

23. "Retail salesman" means a salesman soliciting orders from and calling upon retail alcoholic beverage stores with regard to his or her product;

24. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the manufacturers, wholesalers, Class B wholesalers, retailers, mixed beverage licensees, beer and wine licensees, bottle clubs, caterers, and special event licensees;

25. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer;

26. "Patron" means any person, customer, or visitor who is not employed by a licensee or who is not a licensee;

27. "Person" means and includes an individual, partnership, corporation, or association;

28. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

- a. allowing the presence and consumption of alcoholic beverages, not bearing serially numbered identification stamps issued by the Oklahoma Tax Commission, by private parties which are closed to the general public, or
- b. allowing the services of a caterer serving alcoholic beverages provided by a private party.

This exception shall in no way limit the licensee's concurrent responsibility for any violations of the Oklahoma Alcoholic Beverage Control Act occurring on the licensed premises;

29. "Rectifier" means any person who rectifies, purifies, or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying, or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine, or other liquor with any material, manufactures any spurious, imitation, or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials, or any other name;

30. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required;

31. "Retail container for spirits and wines" means an original package of a capacity not less than one-twentieth (1/20) gallon specified by the ABLE Commission in its regulations for the alcoholic beverage concerned, or an original package with a capacity of less than one-twentieth (1/20) gallon, referred to as miniatures;

32. "Retailer" means the holder of a Package Store License;

33. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant or employee. The term "sale" is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted;

34. "Short order food" means food other than full meals including but not limited to sandwiches, soups, and salads. Provided that popcorn, chips, and other similar snack food shall not be considered "short order food";

35. "Sparkling wine" means champagne or any artificially carbonated wine;

36. "Spirits" means any beverage other than wine, beer or light beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

37. "Wholesaler" means and includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesaler's license or licenses hereunder;

38. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine;

39. "Winemaker" means any person who produces wine; and

40. "Oklahoma winemaker" means a business premises in Oklahoma licensed pursuant to the Oklahoma Alcoholic Beverage Control Act wherein wine is produced by the licensee who must be a resident of the state. The wine product fermented in said licensed premises shall be of grapes, berries and other fruits and vegetables imported into this state and processed herein or shall be of grapes, berries and other fruits and vegetables grown in Oklahoma.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

SECTION 45. AMENDATORY 37 O.S. 1991, Section 518, as last amended by Section 3, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 518), is amended to read as follows:

Section 518. The licenses issued by the Alcoholic Beverage Laws Enforcement Commission, and the annual fees therefor, shall be as follows:

1. Brewer License.....\$1,250.00
2. Distiller License.....\$3,125.00
3. Winemaker License.....\$625.00
4. Oklahoma Winemaker License.....\$75.00
5. Rectifier License.....\$3,125.00
6. Wholesaler License.....\$3,500.00
7. Class B Wholesaler License.....\$625.00
8. The following package store license fees shall be determined by the latest Federal Decennial Census:
 - a. Package Store License for cities and towns from 200 to 2,500 population.....\$305.00
 - b. Package Store License for cities and towns from 2,501 to 5,000 population.....\$605.00
 - c. Package Store License for cities and towns over 5,000 population.....\$905.00
9. Mixed Beverage License..... \$1,005.00
(initial license)
\$905.00
(renewal)
10. Beer and Wine License.....\$500.00
(initial license)
\$450.00
(renewal)
11. Bottle Club License.....\$1,000.00
(initial license)
\$900.00
(renewal)
12. Caterer License..... \$1,005.00
(initial license)
\$905.00
(renewal)
13. Special Event License-fee per day.....\$55.00
14. Hotel Beverage License..... \$1,005.00
(initial license)
\$905.00
(renewal)
15. Airline/Railroad Beverage License..... \$1,005.00
(initial license)
\$905.00
(renewal)
16. Agent License.....\$55.00
17. Employee License.....\$30.00
18. Industrial License.....\$23.00
19. Carrier License.....\$23.00
20. Private Carrier License.....\$23.00
21. Bonded Warehouse License.....\$190.00
22. Storage License.....\$23.00

- 23. Nonresident Seller License.....\$750.00
- 24. Manufacturers Agent License.....\$55.00
- 25. Sacramental Wine Supplier License.....\$100.00

The license fee for a mixed beverage or bottle club license for those service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) and (10) of the Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per year.

The fees provided for in this subsection for a brewer license and for a Class B wholesaler license shall be reduced by seventy-five percent (75%) if the applicant therefor is also the holder of a license to manufacture or wholesale any low-point beer as provided for in this title.

An applicant may apply for and receive both a mixed beverage license and a caterer license. An applicant may apply for and receive both a beer and wine license and a caterer license.

All licenses, except as otherwise provided, shall be valid for one (1) year from date of issuance unless revoked or surrendered. Provided, that a special event license shall be valid for a period not to exceed ten (10) consecutive days from the first day the license is valid; said date to be specified on the license. Provided further, all employee licenses issued on or after September 1, 1993, shall be valid for two (2) years.

The holder of a license, issued by the ABLE Commission, for a bottle club located in a county of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized, may exchange the bottle club license for a mixed beverage license or a beer and wine license and operate the licensed premises as a mixed beverage establishment or a beer and wine establishment subject to the provisions of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title. There shall be no additional fee for such exchange and the mixed beverage license or beer and wine license issued shall expire one (1) year from the date of issuance of the original bottle club license.

SECTION 46. AMENDATORY 37 O.S. 1991, Section 527, as amended by Section 2, Chapter 180, O.S.L. 1993 (37 O.S. Supp. 1994, Section 527), is amended to read as follows:

Section 527. The Alcoholic Beverage Laws Enforcement Commission shall refuse to issue a wholesaler, Class B wholesaler or package store license either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. That the applicant is not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the ten (10) years next preceding the application for the license;

2. That the applicant is under twenty-one (21) years of age;

3. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a felony;

4. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a violation of any state or federal law relating to alcoholic beverages, has forfeited a bond while any charge of such violation was pending, nor may any license be granted for any purpose under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, to an Oklahoma resident, who has held or whose spouse has held a Federal Liquor Stamp in Oklahoma before the adoption of Article XXVII of the Oklahoma Constitution unless said Liquor Stamp was granted for supplying alcoholic beverages to a federal military installation, or was granted under this title;

5. That the applicant or any partner has, within twelve (12) months next preceding the date of the application, violated any provision of the Oklahoma Alcoholic Beverage Control Act or

regulation of the ABLE Commission issued pursuant hereto. Provided, however, that if the ABLE Commission has, during said twelve-month period, suspended any license sought to be renewed, such renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension;

6. That the applicant is not of good moral character, or that the applicant is in the habit of using alcoholic beverages to excess, or is mentally incapacitated. Provided, that the record in any municipal court showing a conviction of violation of any municipal ordinances or state statutes involving moral character or public nuisance obtained after passage and approval of the Oklahoma Alcoholic Beverage Control Act shall be received in evidence by the ABLE Commission;

7. That the applicant does not own or have a written lease for at least a period of one (1) year on the premises for which a license is sought;

8. That the applicant has, within twelve (12) months next preceding the date of application, been the holder of a license revoked for cause;

9. That the applicant is not the real party in interest, or intends to carry on the business authorized by the license as the agent of another;

10. That the applicant, in the case of an application for renewal of any license, would not be eligible for such license on a first application;

11. That the applicant is a person who appoints or is a law enforcement official or is an employee of the ABLE Commission or of the Director;

12. That the proposed location of the licensed premises would violate a valid municipal nondiscriminatory zoning ordinance;

13. That, in the case of an application for a wholesaler license, or Class B wholesaler license, any manufacturer, including an officer, director or principal stockholder thereof, or any partner, has any financial interest in the business to be conducted under the license;

14. That the issuance of the license applied for would result in a violation of any provision of the Oklahoma Alcoholic Beverage Control Act;

15. That, in the case of an application for a wholesaler or Class B wholesaler license, the applicant or any partner, or spouse of the applicant or any partner, is the holder or partner of the holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than an agent or employee license for employment by the applicant, or a storage license, bonded warehouse license, carrier license or private carrier license; or

16. That, in the case of an application for a package store license the applicant or any partner, or the spouse of the applicant or any partner, is the holder or partner of the holder, or employee of such holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than a storage license or an employee license for the proposed licensed premises of the applicant or of a retail dealer's permit for the same location issued by the Oklahoma Tax Commission for the sale of low-point beer for consumption on the premises as provided by Section 163.7 of this title.

SECTION 47. AMENDATORY 37 O.S. 1991, Section 598, is amended to read as follows:

Section 598. If the premises of a licensee of the Alcoholic Beverage Laws Enforcement Commission contains a separate or enclosed lounge or bar area, which has as its main purpose the sale or distribution, of alcoholic beverages for on-premises consumption,

notwithstanding that as an incidental service, meals or short order foods are made available therein, no person under twenty-one (21) years of age shall be admitted to such area. The provisions of this section shall not prohibit persons under twenty-one (21) years of age from being admitted to an area which has as its main purpose some objective other than the sale or mixing or serving of said beverages, in which sales or serving of said beverages are incidental to the main purpose, as long as the persons under twenty-one (21) years of age are not sold or served alcoholic beverages. The incidental service of food in the bar area shall not exempt a licensee from the provisions of this section. The ABLE Commission shall have the authority to designate the portions of the premises of a licensee where persons under twenty-one (21) years of age shall not be admitted pursuant to this section. For purposes of this section only, the term "alcoholic beverages" shall include low-point beer, as defined in Section 163.2 of this title. The ABLE Commission shall promulgate and adopt rules and regulations necessary to implement the provisions of this section.

SECTION 48. AMENDATORY 57 O.S. 1991, Section 21, as last amended by Section 1, Chapter 48, O.S.L. 1993 (57 O.S. Supp. 1994, Section 21), is amended to read as follows:

Section 21. A. Any person who, without authority, brings into or has in his or her possession in any jail or state penal institution or other place where prisoners are located, any gun, knife, bomb or other dangerous instrument, any controlled dangerous substance as defined by Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, any intoxicating beverage or low-point beer as defined by Sections 163.1 and 163.2 of Title 37 of the Oklahoma Statutes, or money, shall be guilty of a felony and is subject to imprisonment in the State Penitentiary for not less than one (1) year or more than five (5) years, or a fine of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.

B. If an inmate is found to be in possession of any such item, upon conviction, such inmate shall be guilty of a felony and shall be subject to imprisonment for not less than five (5) years or more than twenty (20) years in the State Penitentiary.

C. If the person found to be in possession of any such item has, prior to the commission of said offense, committed two or more felony offenses, and said possession of contraband was within ten (10) years of the completion of the execution of the sentence, such person, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term of not less than twenty (20) years. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location.

SECTION 49. AMENDATORY 59 O.S. 1991, Section 1315, is amended to read as follows:

Section 1315. A. The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond:

1. Persons convicted, or who are within the term of sentencing for pleading guilty or nolo contendere to a felony;
2. Jailers;
3. Police officers;
4. Committing judges;
5. Municipal or district court judges;
6. Prisoners;
7. Sheriffs, deputy sheriffs and any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners;
8. Any person who possesses a permit pursuant to the provisions of Section 163.11 of Title 37 of the Oklahoma Statutes or is an

officer, director or stockholder of any corporation holding such a permit;

9. Any person who is an agent, employee, or owner of any establishment at which low-point beer as defined by Section 163.2 of Title 37 of the Oklahoma Statutes is sold for on-premises consumption;

10. Any person who holds any license provided for in Section 518 of Title 37 of the Oklahoma Statutes or is an agent, officer, or employee of any such licensee;

11. Any person who holds any license or permit from any city, town, county, or other governmental subdivision for the operation of any private club at which alcoholic beverages are consumed or provided; and

12. Any person, agent, or employee of retail liquor package stores.

B. This shall not apply to a sheriff, deputy sheriff, police officer or officer of the law who is not on duty and who assists in the apprehension of any defendant.

C. The provisions of this section shall not apply to persons possessing permits or licenses pertaining to low-point beer or alcoholic beverages, as defined in Sections 163.2 and 506 of Title 37 of the Oklahoma Statutes, which were issued prior to May 23, 1984. However, no one shall be permitted to maintain an office for conducting bail bonds business where low-point beer or alcoholic beverages are sold for on-premises consumption.

SECTION 50. AMENDATORY 60 O.S. 1991, Section 178.4, is amended to read as follows:

Section 178.4 Trusts created under the provisions of Sections 176 through 180.55 of this title or any amendments or extensions thereof shall not include any trust purpose, function nor activity: in any wholesale outlet, unless said wholesale outlet is a direct part of the industry. Provided, however, that the distribution centers for intoxicating beverages and low-point beer as defined in Title 37 of the Oklahoma Statutes shall not qualify under the provisions of this title; nor shall it include a retail outlet unless said retail outlet is operated in conjunction with and on the same premises as the industrial, manufacturing, cultural, recreational, parking, transportation or airport facility; nor shall it include a residential enterprise or function except as provided in Section 178.6 of this title.

Provided further, nothing in this section shall preclude the financing, construction, ownership or leasing of a warehouse as a permissible trust purpose, function or activity, so long as such warehouse is not used directly or indirectly for housing, storage or distribution of intoxicating beverages or low-point beer.

SECTION 51. AMENDATORY 63 O.S. 1991, Section 1-1523, as amended by Section 14, Chapter 137, O.S.L. 1994 (63 O.S. Supp. 1994, Section 1-1523), is amended to read as follows:

Section 1-1523. A. No person shall smoke in a designated nonsmoking area in a public place, at a meeting of a public body, in a nursing facility licensed pursuant to the Nursing Home Care Act, Section 1-1901 et seq. of this title, or in a child care facility, during hours of operation, licensed pursuant to the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes. A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking areas for residents and their guests. Nursing facilities may designate smoking areas for employees if such designated areas are in separate rooms that are not used by residents.

B. A health facility or educational facility may prohibit all smoking in such facility or may designate smoking and nonsmoking areas within the facility. An educational facility in which children in grades kindergarten through twelve are educated may also

prohibit smoking, the use of snuff, chewing tobacco or any other form of tobacco product in the buildings and on the grounds of the facility. In an educational facility in which children in grades kindergarten through twelve are educated, smoking areas may only be designated for adults and must be separately ventilated. Provided further, educational facilities in which children in grades kindergarten through twelve are educated which designate a smoking area within the facility shall also designate a nonsmoking area within the facility which may be used by school personnel for breaks, lunch or similar activities.

C. This section shall not apply to a room, hall or building used for a private function if the seating arrangements are under the control of the sponsor of the function and not under the control of the state or local governmental agency or the person who owns or operates the room, hall or building, or to a licensed premises that is a part of a bowling alley area, or to a racetrack licensed by the Oklahoma Racing Commission.

D. This section shall not apply to areas in which prisoners are housed in municipal jails, county jails or correctional institutions as defined in Section 502 of Title 57 of the Oklahoma Statutes.

E. This section shall not apply to a separate or enclosed bar area of a licensed premises, as provided in Section 241 of Title 37 of the Oklahoma Statutes, which has as its main purpose the selling or serving of low-point beer for consumption on the premises.

SECTION 52. AMENDATORY 68 O.S. 1991, Section 205, as last amended by Section 23 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of the Uniform Tax Procedure Code, Section 201 et seq. of this title, or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of this article or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of this article or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or his or her duly authorized representative of a copy of any report or any other paper filed by him or her pursuant to the provisions of the Uniform Tax Procedure Code, Section 201 et seq. of this title, or of any state tax law;

2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of said records and files by the State Auditor and Inspector or his or her duly authorized agents;

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials to prosecute violations of the criminal provisions of this article or of any state tax law. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2454 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2433 and 2434 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2462 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase low-point beer in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued said permit, license or exemption, the name of the business entity authorized to engage in business pursuant to said permit, license or exemption, the address of said business entity, and the grounds for said revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Oklahoma Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis;

22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Said disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

24. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

25. The furnishing to a prospective purchaser of any business, or his or her authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or his authorized representative, of the purchase contract and a written authorization between the parties; or

26. The notification to the suppliers of a motor fuel distributor who has been required by the Tax Commission to sell

motor fuel or diesel fuel on a tax-paid basis pursuant to the provisions of subsection (c) of Section 510 of this title.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of said list.

E. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

F. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both said fine and imprisonment, and the offender shall be removed or dismissed from office.

G. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as said offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to said prosecutions, and said records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 53. AMENDATORY 70 O.S. 1991, Section 24-102, is amended to read as follows:

Section 24-102. The superintendent, principal, teacher, or security personnel of any public school in the State of Oklahoma, upon reasonable suspicion, shall have the authority to detain and search or authorize the search, of any pupil or property in the possession of the pupil when said pupil is on any school premises, or while in transit under the authority of the school, or while attending any function sponsored or authorized by the school, for dangerous weapons, controlled dangerous substances, as defined in the Uniform Controlled Dangerous Substances Act, intoxicating beverages, low-point beer, as defined by Section 163.2 of Title 37 of the Oklahoma Statutes, electronic paging devices or for missing or stolen property if said property be reasonably suspected to have been taken from a pupil, a school employee or the school during school activities. The search shall be conducted by a person of the same sex as the person being searched and shall be witnessed by at least one other authorized person, said person to be of the same sex if practicable.

The extent of any search conducted pursuant to this section shall be reasonably related to the objective of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. In no event shall a strip search of a student be allowed. No student's clothing, except cold weather outerwear, shall be removed prior to or during the conduct of any warrantless search.

The superintendent, principal, teacher, or security personnel searching or authorizing the search shall have authority to detain the pupil to be searched and to preserve any dangerous weapons, controlled dangerous substances, intoxicating beverages, low-point beer, electronic paging devices or missing or stolen property that

might be in the pupil's possession including the authority to authorize any other persons they deem necessary to restrain such pupil or to preserve any dangerous weapons, controlled dangerous substances, intoxicating beverages, low-point beer, electronic paging devices or missing or stolen property.

Any pupil found to be in possession of dangerous weapons, controlled dangerous substances, intoxicating beverages, low-point beer, electronic paging devices or missing or stolen property may be suspended by the superintendent or principal for a period not to exceed the current school semester and the succeeding semester. Any such suspension may be appealed to the board of education of the school district by any pupil suspended under this section.

Pupils shall not have any reasonable expectation of privacy towards school administrators or teachers in the contents of a school locker, desk, or other school property. School personnel shall have access to school lockers, desks, and other school property in order to properly supervise the welfare of pupils. School lockers, desks, and other areas of school facilities may be opened and examined by school officials at any time and no reason shall be necessary for such search. Schools shall inform pupils in the student discipline code that they have no reasonable expectation of privacy rights towards school officials in school lockers, desks, or other school property.

SECTION 54. AMENDATORY 70 O.S. 1991, Section 24-132, is amended to read as follows:

Section 24-132. Any public school administrator, teacher or counselor having reasonable cause to suspect that a student is under the influence of low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes or a controlled dangerous substance as defined in Section 2-101 of Title 63 of the Oklahoma Statutes or has in the student's possession low-point beer, alcoholic beverages or a controlled dangerous substance, who reports such information to the appropriate school official, court personnel, community substance abuse prevention and treatment personnel or any law enforcement agency, pursuant to the school's policy shall have immunity from any civil liability that might otherwise be incurred or imposed as a result of the making of such a report.

SECTION 55. AMENDATORY 70 O.S. 1991, Section 24-138, is amended to read as follows:

Section 24-138. A. Whenever it appears to any public school teacher that a student may be under the influence of low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes or a controlled dangerous substance, as defined in Section 2-101 of Title 63 of the Oklahoma Statutes, that teacher shall report the matter, upon recognition, to the school principal or his or her designee. The principal or designee shall immediately notify the superintendent of schools or designee and a parent or legal guardian of the student of the matter.

No officer or employee of any public school district or member of any school board shall be subject to any civil liability for any statement, report, or action taken in assisting or referring for assistance to any medical treatment, social service agency or facility or any substance abuse prevention and treatment program any student reasonably believed to be abusing or incapacitated by the use of low-point beer, alcoholic beverages or a controlled dangerous substance unless such assistance or referral was made in bad faith or with malicious purpose. No such officer or employee of any public school district, member of any school board, school or school district shall be responsible for any treatment costs incurred by a student as a result of any such assistance or referral to any

medical treatment, social service agency or facility, or substance abuse prevention and treatment program.

B. Every school district shall have and deliver to each classroom teacher a written policy that such teachers shall follow if they have a student who appears to be under the influence of low-point beer, alcoholic beverages or a controlled dangerous substance in their classroom. The written policy shall be developed by the local superintendent of schools and adopted by the local board of education. The provisions of subsection A of this section shall be the minimum requirements of such written policy. The written policy shall be filed with the office of the State Superintendent of Public Instruction within ninety (90) days of the effective date of this act. If such filing is not timely made, the public schools in such school district shall lose their accreditation until the written policy is filed.

SECTION 56. AMENDATORY 70 O.S. 1991, Section 1210.229-3, is amended to read as follows:

Section 1210.229-3 For purposes of the Oklahoma Alcohol and Drug Abuse Prevention and Life Skills Education Act, Section 1210.229-1 et seq. of this title:

1. "Alcohol" means any low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes or alcoholic beverage as defined in Section 506 of Title 37 of the Oklahoma Statutes;
2. "Board" means the State Board of Education;
3. "Department" means the State Department of Education;
4. "Drug" means a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes; and
5. "Life skills" includes but is not limited to fostering skills in responsibility, decision making, communication, self-confidence and goal setting. Life skills shall not include values clarification or sex education.

SECTION 57. AMENDATORY 74 O.S. 1991, Section 1851, as amended by Section 1, Chapter 91, O.S.L. 1993 (74 O.S. Supp. 1994, Section 1851), is amended to read as follows:

Section 1851. There is hereby created a petty cash fund in the revolving fund of each of the parks, lodges and marketing services activities under the control of the Oklahoma Tourism and Recreation Department. Said petty cash funds shall be such amounts as are determined to be necessary by the Director of State Finance and the Director of the Oklahoma Tourism and Recreation Department. Petty cash funds may be expended for the payment of emergency purchases, for postage due, for resale merchandise and firewood purchases under One Hundred Dollars (\$100.00), for refund of charges for returned merchandise, for refund of advance deposits for lodge rooms, to reimburse lodge lease concessions, for purchases charged to guests' statement of account, to reimburse employees for gratuities charged to guests' statement of accounts, to pay artisans the net proceeds resulting from the sale of consignment arts and crafts products, and to purchase low-point beer.

The said petty cash funds may be reimbursed by the State Treasurer upon the filing of a claim with the proper receipts or from the agency clearing account if the petty cash disbursement was a refund of erroneous or excessive collections or credits. Petty cash funds may be reimbursed from the agency clearing account for shortages accruing to said account. Reimbursements are to be made from the revolving fund. The Director of State Finance shall prescribe all forms, systems and procedures for administering the petty cash funds of the various parks, lodges and marketing services activities of the Oklahoma Tourism and Recreation Department.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 219.1 of Title 37, unless there is created a duplication in numbering, reads as follows:

The sale of low-point beer, as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, for off-premises consumption is hereby prohibited between the hours of two o'clock a.m. and six o'clock a.m. of the same day.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 601 of Title 37, unless there is created a duplication in numbering, reads as follows:

Sections 59 through 64 of this act shall be known and may be cited as the "Prevention of Youth Access to Alcoholic Beverages and Low-Point Beer Act".

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 602 of Title 37, unless there is created a duplication in numbering, reads as follows:

As used in Sections 59 through 64 of this act:

1. "Alcoholic beverage" means any beverage so defined pursuant to Section 506 of Title 37 of the Oklahoma Statutes;
2. "Low-point beer" means any beverage so defined pursuant to Section 163.2 of Title 37 of the Oklahoma Statutes;
3. "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed; and
4. "Proof of age" means a driver license or a card issued for identification only pursuant to Section 6-105 of Title 47 of the Oklahoma Statutes, or other generally accepted means of identification that describes the individual as twenty-one (21) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 603 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Every person who sells alcoholic beverages at retail shall post conspicuously and keep so posted at the place of business a sign stating the following: "IT'S THE LAW. WE DO NOT SELL ALCOHOLIC BEVERAGES TO PERSONS UNDER 21 YEARS OF AGE". Every person who sells low-point beer at retail shall post conspicuously and keep so posted at the place of business a sign stating the following: "IT'S THE LAW. WE DO NOT SELL LOW-POINT BEER TO PERSONS UNDER 21 YEARS OF AGE".

B. A violation of subsection A of this section constitutes a misdemeanor and upon conviction thereof a violator shall be assessed a fine not to exceed fifty dollars (\$50.00) for each day such offense occurred. The notices required by subsection A of this section shall be the only notices required to be posted or maintained in any store that sells alcoholic beverages or low-point beer at retail.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 604 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Every person engaged in the business of selling alcoholic beverages or low-point beer at retail shall notify each individual employed by that person as a retail sales clerk or server that state law:

1. Prohibits the sale or distribution of alcoholic beverages and low-point beer to any person under twenty-one (21) years of age and the purchase or receipt of alcoholic beverages and low-point beer by any person under twenty-one (21) years of age; and
2. Requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-one (21) years of age.

B. This notice shall be provided before the individual commences work as a retail sales clerk or server, or, in the case of an individual employed as a retail sales clerk or server on the date when this section becomes effective, within thirty (30) days of that

date. The individual shall signify that he or she has received the notice required by this section by signing a form stating as follows:

"I understand that state law prohibits the sale or distribution of alcoholic beverages and low-point beer to persons under twenty-one (21) years of age, and requires proof of age of purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-one (21) years of age. I have been advised on the law and I understand the penalty for violating it."

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 605 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. All law enforcement agencies are authorized and empowered to enforce the provisions of this act. The provisions shall be enforced in a manner that can reasonably be expected to reduce the extent to which alcoholic beverages and low-point beer are sold or distributed to persons under twenty-one (21) years of age.

B. Persons under twenty-one (21) years of age may be enlisted by law enforcement agencies to assist in enforcement. Provided, however, that such persons may be used to test compliance only if the testing is conducted under the direct supervision of the law enforcement agency; provided, written parental consent shall be obtained prior to the use of any person under the age of eighteen (18) years. Any other use of persons under twenty-one (21) years of age to test compliance shall be unlawful and punishable by assessment of an administrative fine of One Hundred Dollars (\$100.00).

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 606 of Title 37, unless there is created a duplication in numbering, reads as follows:

Nothing in the Prevention of Youth Access to Alcoholic Beverages and Low-Point Beer Act shall be construed to prevent the imposition of any penalty as otherwise specified in the Oklahoma Statutes.

SECTION 65. This act shall become effective November 1, 1995.