STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1418 By: Fields of the House

and

Hobson of the Senate

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Sections 163.7, as last amended by Section 1, Chapter 258, O.S.L. 1994 and 231, as amended by Section 4, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1994, Sections 163.7 and 231), which relate to nonintoxicating beverages; authorizing any retail dealer that brews nonintoxicating beverages to sell the beverages at certain locations; defining term; providing an effective date; and declaring an emergency.

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

SECTION 1. 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 this act, and in addition to the license required to be procured from the judge of the district court, the following permits shall be required and the following annual license taxes shall be payable to the Oklahoma Tax Commission with respect to nonintoxicating beverages:

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

Every manufacturer, located and doing business outside the State of Oklahoma, desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required 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 nonintoxicating beverages. As a condition of the issuance of this permit such wholesaler shall pay to the Tax Commission a license fee of Two Hundred Fifty Dollars ($250.00) which shall cover a one-year period commencing with the effective date of such permit. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period.

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

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

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

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

a. each retail dealer who sells nonintoxicating beverages, 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 nonintoxicating beverages purchased from a licensed manufacturer or licensed wholesaler for consumption on or off the premises and who sells nonintoxicating beverages manufactured by said retail dealer for consumption on the premises shall 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 nonintoxicating beverages per year. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell nonintoxicating beverages manufactured by the retail dealer, at any place of business, as defined in Section 163.8 of this title, for which the same retail dealer has a permit issued pursuant to this subparagraph, regardless of which place of business brews the beverage. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell nonintoxicating beverages manufactured by the same retailer pursuant to special licenses issued pursuant to subparagraph d of this paragraph,

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 nonintoxicating beverage to be consumed, in or upon the premises described in such permit,

f. a permit issued prior to the effective date of this act 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 nonintoxicating beverages 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 2. 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. From and after sixty (60) days from the passage of this act, it shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a brewer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of nonintoxicating malt beverages, individually or through or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

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

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

3. Furnish, give, rent, lend, or sell to a retail dealer in nonintoxicating malt beverages any equipment, fixture, outside signs, supplies, or other things having a real or substantial value. Provided that this paragraph shall not be construed to prohibit the furnishing of normal point of purchase advertising matter to such retail dealer in nonintoxicating malt beverages.

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

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

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

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

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

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

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

B. The provisions of this section shall not preclude a retail dealer from manufacturing nonintoxicating beverages for consumption on the licensed premises of the retail dealer. <u>As used in this subsection, "licensed premises" means any place of business, as defined by Section 163.8 of this title, for which a retail dealer has obtained a permit pursuant to subparagraph c of paragraph 3 of Section 163.7 of this title or any location for which a retail dealer has obtained a special license pursuant to subparagraph d of paragraph 3 of Section 163.7 of this title.</u>

SECTION 3. This act shall become effective July 1, 1995.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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