

ENGROSSED HOUSE
BILL NO. 2113

By: Gray of the House

and

Smith of the Senate

(intoxicating liquors - amending 37 O.S., Section 163.7
- low-point beer permits - codification - effective date
)

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 6, Chapter 3, O.S.L. 1996 (37 O.S. Supp. 1996, 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.

Wholesalers within this state shall be required to comply with the provisions of Section 2 of this act.

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. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell low-point beer manufactured by the retail dealer, at any of the retail dealer's places of business, as defined in Section 163.8 of this title, or any other place owned and operated by an entity which has common owners with the licensed dealer, regardless of which place of business brews the beverage. "Common owners" means that the owners at each place or entity together own more than fifty percent (50%) of the interest in each place or entity that has a permit issued pursuant to this subparagraph. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell low-point beer 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 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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.7A of Title 37, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other requirements necessary for issuance or renewal of a wholesaler's license, the Tax Commission shall require an applicant for a license or a holder of a license to show that the applicant or holder:

1. Has entered into or will acquire a written agreement designating an assigned territory from a manufacturer in accordance with the Low-Point Beer Distribution Act;

2. Has received or has applied for all licenses or permits required to engage in business in the assigned territory as a holder of a wholesaler's license, including any state or federal licenses or permits;

3. Has ordered, received, and stored or has committed to order, receive, and store a sufficient amount of beer that the wholesaler is authorized to sell to ensure that the wholesaler can supply the reasonable needs of all retailers in the assigned territory;

4. Has received and stored or has committed to receive and store beer received from a manufacturer in a manner complying with a product quality control standard established by the manufacturer or the Commission; and

5. Has or will have the ability to sell, deliver, and promote each brand of beer sold by the wholesaler to all retailers in the assigned territory:

a. in a manner that complies with the product quality control standards of the manufacturer, and

b. on a continuing and recurring basis in response to reasonable market demand for a brand of beer by the retailer or the retailer's customers in the assigned territory.

B. In determining whether an applicant for or holder of a wholesaler's license meets the requirement of paragraph 5 of subsection A of this section, the Tax Commission may require the applicant or holder to show that the applicant or holder has or will have:

1. Storage facilities of a sufficient size to store each brand of beer in an amount equal to the demand for the product from all retailers in the holder's or applicant's assigned territory;

2. An inventory or a commitment to acquire an inventory of each brand of beer in an amount equal to the demand for the brand from all retailers in the holder's or applicant's assigned territory;

3. A sufficient number of employees to provide the holder or applicant with the ability:

a. to sell, deliver on a reasonably prompt basis, and promote each brand of beer to all retailers in the holder's or applicant's assigned territory, and

b. to prepare and submit in a timely manner any fee or tax payments or reports required by any authorized governmental regulatory authority, including the Bureau of Alcohol, Tobacco, and Firearms and the Tax Commission; and

4. A sufficient number of delivery vehicles and rolling stock to provide the holder or the applicant with the capability of transporting, selling, delivering, or promoting each brand of beer to all retailers in the assigned territory.

C. The Tax Commission shall refuse to approve an application for a wholesaler's license or shall refuse to renew a wholesaler's license if the Commission finds the holder or applicant has failed to comply with any of the requirements of subsection A or B of this section.

D. As used in this section and the Low-Point Beer Distribution Act:

1. "Brand" means any word, name, group of letters, symbol, or trademark or a combination of any word, name, group of letters, symbol, or trademark that is adopted and used by a manufacturer on a label or on packaging to identify a specific low-point beer or malt beverage and to distinguish the low-point beer or malt beverage product from the label or packaging of another low-point beer or malt beverage produced or marketed by any manufacturer. The term does not include the name of the manufacturer unless the name of the manufacturer is included in the name of the brand; and

2. "Brand extension" means a brand that incorporates a brand name or brand logo of the same manufacturer. A brand extension is not a new or different brand.

E. A manufacturer shall assign a brand extension to the wholesaler to whom the brand was originally assigned, and such wholesaler must distribute and sell the brand extension if the manufacture so elects.

SECTION 3. This act shall become effective November 1, 1997.

Passed the House of Representatives the 26th day of February, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate