

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3334

By: Easley of the House

and

Easley of the Senate

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Sections 163.11, as last amended by Section 1, Chapter 364, O.S.L. 1997, 163.16, as amended by Section 22, Chapter 274, O.S.L. 1995, 163.24, as last amended by Section 34, Chapter 274, O.S.L. 1995, 518.2, as last amended by Section 1, Chapter 183, O.S.L. 1997 and 529 (37 O.S. Supp. 1997, Sections 163.11, 163.16, 163.24 and 518.2), which relate to locations for licensees and license revocation procedures; modifying procedures for revocation of certain licenses and permits for certain violations; prohibiting sales of low-point beer and alcoholic beverages under certain circumstances; requiring certain notification; prohibiting location of certain places within certain distance of private school; modifying procedure for calculation of distance between certain establishments and school or church property; specifying establishments to which provisions effective; prohibiting location of certain entities within certain distance of other entities; providing procedure for calculation of

distance between such entities; 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 163.11, as last amended by Section 1, Chapter 364, O.S.L. 1997 (37 O.S. Supp. 1997, Section 163.11), 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 in Section 163.2 of this title, 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. 1. 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.

2. A person who has been convicted of a felony shall not be eligible for a permit unless the person received a pardon for the felony or a period of ten (10) years has elapsed since the completion of the sentence imposed for the felony.

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) years of age 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. Notwithstanding the provisions of subsection K of this section, a judge of the district court, without prior notice to the person holding such permit, shall immediately revoke such permit for a violation of the provisions of Section 163.24 of this title. On July 1, 1998, the presiding judge of each judicial administrative district shall cause any permit issued prior to July 1, 1998, for

any and all places which do not meet the requirements of Section 163.24 of this title to be revoked and the sale of low-point beer shall not be permitted to occur at such places thereafter unless and until such revocation is overturned by a court of competent jurisdiction. The permit holder shall be notified by the district court clerk that his or her permit has been revoked and such notification shall specify procedures to appeal such revocation.

M. 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.~~ N. 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.

~~N.~~ O. Upon application to and approval by the court clerk of the district court, a retail dealer as defined by Section 163.2 of this title who meets the requirements of this section and Section 163.11a of this title may be granted a special event permit without the requirement of notice or posting, after payment of a fee of Twenty-five Dollars (\$25.00) in addition to other fees required by law, which fees shall not be refundable or apportionable. A special

event permit issued under this subsection shall authorize the holder thereof to sell and distribute low-point beer for a period not to exceed ten (10) consecutive days from the date of issuance. A separate permit shall be required for each individual place of business, whether permanent or a temporary assemblage. A special event permit shall not be renewable.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 163.16, as amended by Section 22, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1997, Section 163.16), is amended to read as follows:

Section 163.16 A. 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 in Section 163.2 of this title, 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.

B. Notwithstanding the provisions of subsection A of this section, any license issued to a retail dealer shall be immediately revoked by the Oklahoma Tax Commission without prior notice to such retail dealer for a violation of the provisions of Section 163.24 of

this title. On July 1, 1998, the Oklahoma Tax Commission shall revoke any permit issued prior to July 1, 1998, for any and all places which do not meet the requirements of Section 163.24 of this title and the sale of low-point beer shall not be permitted to occur at such places thereafter unless and until such revocation is overturned by a court of competent jurisdiction. The licensee shall be notified by the Oklahoma Tax Commission that his or her license has been revoked and such notification shall specify procedures to appeal such revocation.

C. In any case except as provided in subsection B of this section, 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 the county permit has been revoked by the judge of the district court or application for renewal of the county permit shall have been refused by the judge of the district court.

SECTION 3. AMENDATORY 37 O.S. 1991, Section 163.24, as last amended by Section 34, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1997, Section 163.24), is amended to read as follows:

Section 163.24 A. 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 or private 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~~ subsection shall be measured from the nearest property line of such public or private school or church to the nearest ~~public entrance door~~ property line 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.~~

B. 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 five hundred (500) feet of any other place licensed to sell low-point beer, or a retail package store, mixed beverage establishment, bottle club, or beer and wine establishment. The distance indicated in this subsection shall be measured from the nearest property line of the place licensed to sell low-point beer to the nearest property line of the other place licensed to sell low-point beer, retail package store, mixed beverage establishment, bottle club, or beer and wine establishment.

On and after July 1, 1998, a permit issued to such a place pursuant to the provisions of Section 163.11 of this title shall not be renewed if the requirements of this subsection are not met.

C. The provisions of this section shall be effective on and after July 1, 1998, for places licensed on, after or prior to July 1, 1998, to sell low-point beer for on-premises consumption.

D. 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 4. AMENDATORY 37 O.S. 1991, Section 518.2, as last amended by Section 1, Chapter 183, O.S.L. 1997 (37 O.S. Supp. 1997, Section 518.2), is amended to read as follows:

Section 518.2 A. 1. The location of a retail package store, mixed beverage establishment, or bottle club shall be subject to the nondiscriminatory zoning ordinances of the town or city in which located, and the location of such entities is specifically prohibited within three hundred (300) feet of any church property primarily and regularly used for worship services and religious activities, or public or private school; ~~provided, if any such church or school shall be established within three hundred (300) feet of any licensed premises after the premises have been licensed, this subsection shall not be a bar to the renewal of the license if it has been in continuous force and effect. A license shall not be issued for a location on any city or town block where a church or school is located; provided, that this prohibition shall not bar:~~

- ~~a. the renewal of a license if the license has been in continuous force and effect since the effective date of this act, or~~
- ~~b. the issuance of a license to a subsequent licensee for the same location if a license for the location has~~

~~been in continuous force and effect since the effective date of this act.~~

2. The distances indicated in paragraph 1 of this subsection shall be measured from the nearest property line of the church or school to the nearest ~~public entrance door~~ property line of the premises of the package store, mixed beverage establishment, or bottle club ~~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 the church or school shall be considered as if it were located on the same side of the street with the church or school.~~ The provisions of this paragraph shall be effective on and after July 1, 1998, for retail package stores, mixed beverage establishments and bottle clubs licensed on, after or prior to July 1, 1998.

~~3. Nothing shall bar the future issuance or renewal of a retail package store license to any retail package store license holder or subsequent transferee of any license holder for a retail package store location that was approved and licensed by the Oklahoma Alcoholic Beverage Control Board prior to January 7, 1976, if the license has been in continuous force and effect.~~

~~4. Nothing shall bar the issuance or renewal of a mixed beverage or bottle club license to any mixed beverage or bottle club license holder or applicant for a mixed beverage or bottle club license for any location that was approved and licensed as a private club by a city or town prior to March 14, 1985, if a municipal license, bottle club license, or mixed beverage license covering any portion of the premises or location has been in continuous force and effect.~~

B. 1. The location of a beer and wine establishment shall be subject to the nondiscriminatory zoning ordinances of the town or city in which located, and any such ordinance shall provide that the

location of a beer and wine establishment shall not be within three hundred (300) feet of any church property primarily and regularly used for worship services and religious activities, or public or private school; ~~provided, if any such church or school shall be established within three hundred (300) feet of any licensed premises of a beer and wine establishment after the premises have been licensed, this subsection shall not be a bar to the renewal of the license if it has been in continuous force and effect.~~

2. ~~Nothing shall bar the future issuance or renewal of a beer and wine license to any beer and wine license holder or subsequent transferee of any license holder for a beer and wine location that has been approved and licensed by the ABLE Commission.~~

3. ~~The distance indicated in paragraph 1 of this subsection shall be measured from the nearest property line of the church or school to the nearest public entrance door property line of the premises of the beer and wine establishment ~~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 the church or school shall be considered as if it were located on the same side of the street with the church or school.~~ The provisions of this paragraph shall be effective on and after July 1, 1998, for beer and wine establishments licensed on, after or prior to July 1, 1998.~~

C. The location of a retail package store, mixed beverage establishment, bottle club or beer and wine establishment within five hundred (500) feet of any other retail package store, mixed beverage establishment, bottle club, beer and wine establishment or place licensed to sell low-point beer, is specifically prohibited. The distance indicated in this subsection shall be measured from the nearest property line of the retail package store, mixed beverage establishment, bottle club or beer and wine establishment to the

nearest property line of the other retail package store, mixed beverage establishment, bottle club, beer and wine establishment or place licensed to sell low-point beer. On and after July 1, 1998, a license issued to such a retail package store, mixed beverage establishment, bottle club or beer and wine establishment shall not be renewed if the requirements of this subsection are not met.

D. 1. Any interested party may protest the application for or granting of an original package store, mixed beverage, bottle club, or beer and wine license based on an alleged violation of this section. To be considered by the ABLE Commission, the protest must:

- a. be submitted in writing,
- b. be signed by the person protesting,
- c. contain the mailing address and address of residence, if different from the mailing address, of the protester,
- d. contain the title of the person signing the protest, if the person is acting in an official capacity as a church or school official, and
- e. contain a concise statement explaining why the application is being protested.

2. Within thirty (30) days of the date of receipt of a written protest, the ABLE Commission shall conduct a hearing on the protest if the protest meets the requirements of paragraph 1 of this subsection.

3. As used in this subsection, "interested party" means:

- a. a parent or legal guardian whose child or children attend the church or school which is alleged to be closer to the package store, mixed beverage establishment, bottle club, or beer and wine establishment than is allowed by this section,
- b. an official of a church which is alleged to be closer to the package store, mixed beverage establishment,

bottle club, or beer and wine establishment than is allowed by this section, or

- c. an official of a school which is alleged to be closer to the package store, mixed beverage establishment, bottle club, or beer and wine establishment than is allowed by this section.

SECTION 5. AMENDATORY 37 O.S. 1991, Section 529, is amended to read as follows:

Section 529. In the case of denial of an application for an original license, the Alcoholic Beverage Laws Enforcement Commission shall give written notice to the applicant either by registered mail directed to ~~his~~ the applicant's last-known address or by delivery, stating the reason for such denial. If the ABLE Commission proposes to deny renewal of any license or to suspend or revoke a license, it shall give written notice to the licensee addressed to ~~his~~ the licensed premises by registered mail, by personal delivery, or by posting of ~~said~~ the notice on the outside entrance to the licensed premises, notifying ~~said~~ the licensee of such contemplated denial, suspension or revocation, and of the time and place at which the licensee may be accorded a hearing before the ABLE Commission on the matter, which time shall not be less than fifteen (15) days from the date of mailing, delivery or posting of such notice. Such notice shall set forth the grounds for the proposed denial, suspension or revocation. The ABLE Commission may delegate any part of this function to the Director or ~~his~~ assistants ~~in his department~~ of the Director, but any person aggrieved by any order shall have the right to be heard by the ABLE Commission and the ABLE Commission shall provide adequate procedure to protect the right of persons desiring to do so. Provided, notwithstanding the provisions of this section, the ABLE Commission shall, on July 1, 1998, revoke any license issued prior to the effective date of this act for any and all retail package stores, mixed beverage establishments, bottle clubs

and beer and wine establishments which do not meet the conditions specified in Section 518.2 of this title and the sale of alcoholic beverages shall not be permitted to occur at such retail package stores, mixed beverage establishments, bottle clubs and beer and wine establishments thereafter unless and until such revocation is overturned by a court of competent jurisdiction. The licensee shall be notified by the ABLE Commission that the license has been revoked and such notification shall specify procedures to appeal such revocation.

SECTION 6. This act shall become effective July 1, 1998.

SECTION 7. 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.

46-2-9349

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