

ENGROSSED HOUSE
BILL NO. 2317

By: Gray and Phillips of the
House

and

Coffee of the Senate

(intoxicating liquors - amending 37 O.S., Sections
163.7 and 163.11 - low-point beer - refund of
permit fees - 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.
1999, 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~~
low-point beer 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. 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, upon surrender of the permit to the Oklahoma Tax Commission. The manner and prorated refund shall be prescribed by the Oklahoma Tax Commission.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 163.11, as last amended by Section 1, Chapter 364, O.S.L. 1997 (37 O.S. Supp. 1999, 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, 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~~ 163.27 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, upon surrender of the existing permit to the district court clerk. 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.

N. 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. A municipality shall not, by ordinance or otherwise, refuse to issue a special event permit or special event license on the basis that the applicant already possesses a permit or license in the applicant's same name.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.28 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. This section applies to a licensee or permittee who is authorized to sell low-point beer to an ultimate consumer for consumption off the premises.

B. The holder of a license or permit described in subsection A of this section may resell low-point beer only in the packaging in which the holder received the low-point beer or may resell the contents of the packages as individual containers.

C. Except for purposes of resale as individual containers, a licensee or permittee shall not:

1. Mutilate, tear apart, or cut apart original packaging in which low-point beer was received; or

2. Repackage low-point beer in a manner misleading to the consumer or that results in required labeling being omitted or obscured.

D. The Oklahoma Tax Commission shall impose the following penalties for a violation of subsection B or C of this section:

1. After notice and hearing, immediately revoke the license or permit of the licensee or permittee committing the violation; and

2. Impose a fine of not more than One Thousand Dollars (\$1,000.00) for each violation.

Any licensee or permittee whose license or permit is revoked pursuant to this subsection shall not be eligible to reapply for a license for at least three (3) months from the date of the revocation. Any stock of low-point beer in the possession of such licensee or permittee shall be repurchased by the wholesaler.

E. Administrative fines collected pursuant to this section shall be enforceable in the district courts of this state. All administrative fines collected by the Oklahoma Tax Commission pursuant to this section shall be forwarded to the State Treasurer for deposit in the General Revenue Fund.

F. To assure and control quality, the holder of a distributor's license or wholesaler's permit, at the time of a regular delivery, may withdraw with the permission of the retailer, a quantity of low-point beer in undamaged original packaging from the retailer's stock and replace it with product of equal value.

G. A consignment sale of low-point beer is not authorized under subsection F of this section.

SECTION 4. This act shall become effective November 1, 2000.

Passed the House of Representatives the 7th day of March, 2000.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 2000.

President of the Senate