ENROLLED SENATE
BILL NO. 353

By: Ford of the Senate

and

Dorman of the House

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Sections 163.3, 163.4, as amended by Section 26, Chapter 460, O.S.L. 2002, 163.7, 231, 518, as amended by Section 1, Chapter 109, O.S.L. 2002, 521, as amended by Section 1 of Enrolled House Bill No. 1107 of the 1st Session of the 49th Oklahoma Legislature, 553, as amended by Section 28, Chapter 460, O.S.L. 2002, and 573 (37 O.S. Supp. 2002, Sections 163.4, 518 and 553), which relate to the manufacture and sale of low-point beer; providing specified exemption; providing for the payment of excise taxes; providing exception to restriction of sale; modifying amount and expiration period for certain permits; limiting quantity of products which may be sold under specified circumstances; providing for reduced fee under specified circumstances; authorizing certain manufacturers to serve samples; modifying application of, and providing exemption from, unlawful acts; establishing new license fee; modifying activities permitted under wholesaler, package store, and mixed beverage licenses; modifying employee licensing requirements; providing exception to requirement to pay excise tax; providing exception to brand label registration fee requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, 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. <u>Provided, any low-point beer manufactured in this state for export shall not be taxed under this section.</u>

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 2. AMENDATORY 37 O.S. 2001, Section 163.4, as amended by Section 26, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2002, 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.

When the sale is made by a manufacturer located and doing business in this state to a consumer in this state, the tax shall be paid by the manufacturer;

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

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~~ Except as provided in paragraph 1 of Section 163.7 of this title, 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 3. AMENDATORY 37 O.S. 2001, 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 November 1, 1995, with respect to 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 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)~~ Four Hundred Fifty Dollars ($450.00), which shall cover a ~~one-year~~ three-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 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 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 Tax Commission before such manufacturer shall sell, or offer for sale, such beverages to any person within the State of Oklahoma. Provided, a manufacturer located and doing business in this state may sell not more than five thousand (5,000) barrels annually of its own products directly to consumers by procuring a retail license.

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 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. The fee shall be reduced by seventy-five percent (75%) if the applicant is a holder of a license to manufacture low-point beer and is located and doing business in this state.

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 Tax Commission a permit to engage in such sales, and shall pay to the

Tax Commission, in advance of the issuance of the 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 the retail dealer 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 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; provided, however, a manufacturer located and doing business in this state and selling its own products for off-premises consumption may serve visitors on the premises free samples of low-point beer produced on the premises provided such samples shall not exceed twelve (12) fluid ounces per customer per visit, and

f. 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 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 Tax Commission.

SECTION 4. AMENDATORY 37 O.S. 2001, 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~~ manufacturer, 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 or off the licensed premises of the retail dealer. 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.

C. Outright one-hundred percent (100%) ownership of a retail business by an in-state manufacturer or an in-state manufacturer with a wholesaler permit is not an interest which results in a violation of this section. An in-state manufacturer or an in-state manufacturer with a wholesaler permit shall not sell at its own retail business more than five thousand (5,000) barrels annually of low-point beer it produces.

SECTION 5. AMENDATORY 37 O.S. 2001, Section 518, as amended by Section 1, Chapter 109, O.S.L. 2002 (37 O.S. Supp. 2002, Section 518), is amended to read as follows:

Section 518. A. Except as otherwise provided in this section, 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. Oklahoma Brewer License..... $125.00

3. Distiller License..... $3,125.00

~~3.~~ 4. Winemaker License..... $625.00

~~4.~~ 5. Oklahoma Winemaker License..... $75.00

~~5.~~ 6. Rectifier License..... $3,125.00

~~6.~~ 7. Wholesaler License..... $3,500.00

~~7.~~ 8. Class B Wholesaler License..... $625.00

~~8.~~ 9. 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.~~ 10. Mixed Beverage License..... $1,005.00 (initial license)

$905.00 (renewal)

~~10.~~ 11. Mixed Beverage/Caterer Combination License..... $1,250.00

~~11.~~ 12. Beer and Wine License..... $500.00 (initial license)

$450.00 (renewal)

~~12.~~ 13. Bottle Club License..... $1,000.00 (initial license)

$900.00 (renewal)

~~13.~~ 14. Caterer License..... $1,005.00 (initial license)

$905.00 (renewal)

~~14.~~ 15. Annual Special Event License..... $55.00

~~15.~~ 16. Quarterly Special Event License..... $55.00

~~16.~~ 17. Hotel Beverage License..... $1,005.00

(initial license)

$905.00

(renewal)

~~17.~~ 18. Airline/Railroad Beverage License..... $1,005.00

(initial license)

$905.00

(renewal)

~~18.~~ 19. Agent License..... $55.00

~~19.~~ 20. Employee License..... $30.00

~~20.~~ 21. Industrial License..... $23.00

~~21.~~ 22. Carrier License..... $23.00

~~22.~~ 23. Private Carrier License..... $23.00

~~23.~~ 24. Bonded Warehouse License..... $190.00

~~24.~~ 25. Storage License..... $23.00

~~25.~~ 26. Nonresident Seller License..... $750.00

~~26.~~ 27. Manufacturers Agent License..... $55.00

~~27.~~ 28. Sacramental Wine Supplier License..... $100.00

~~28.~~ 29. Charitable Auction License..... $1.00

There shall be added to the initial or renewal fees for a Mixed Beverage License an administrative fee, which shall not be deemed to be a license fee, in the amount of Five Hundred Dollars ($500.00), which shall be paid at the same time and in the same manner as the license fees prescribed by paragraph ~~9~~ 10 of this subsection; provided, this fee shall not be assessed against service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue Code. There shall be added to the fee for a Mixed Beverage/Caterer Combination License an administrative fee, which shall not be deemed to be a license fee, in the amount of Two Hundred Fifty Dollars ($250.00), which shall be paid at the same time and in the same manner as the license fee prescribed by paragraph ~~10~~ 11 of this subsection.

B. Notwithstanding the provisions of subsection A of this section:

1. 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) or (10) of the Internal Revenue Code shall be Five Hundred Dollars ($500.00) per year;

2. The fees provided for in subsection A of this section 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; and

3. The renewal fee for an airline/railroad beverage license held by a railroad described in Section 24301 of Title 49 of the United States Code, 49 U.S.C., Section 24301, shall be One Hundred Dollars ($100.00).

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

D. All licenses, except as otherwise provided, shall be valid for one (1) year from date of issuance unless revoked or surrendered. Provided, all employee licenses issued on or after September 1, 1993, shall be valid for two (2) years.

E. 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. 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 6. AMENDATORY 37 O.S. 2001, Section 521, as amended by Section 1 of Enrolled House Bill No. 1107 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 521. A. A brewer license shall authorize the holder thereof: To manufacture, bottle, package, and store beer on licensed premises; to sell beer in this state to holders of Class B wholesaler licenses and retail licenses and to sell beer out of this state to qualified persons.

B. A distiller license shall authorize the holder thereof: To manufacture, bottle, package, and store spirits on licensed premises; to sell spirits in this state to licensed wholesalers and manufacturers only; to sell spirits out of this state to qualified persons; to purchase from licensed distillers and rectifiers in this state, and import spirits from without this state for manufacturing purposes in accordance with federal laws and regulations.

C. A winemaker license shall authorize the holder thereof: To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package, and store on licensed

premises wine containing not more than twenty-four percent (24%) alcohol by volume, provided the bottle or package sizes authorized shall be limited to the capacities approved by the United States Bureau of Alcohol, Tobacco and Firearms; to sell wine in this state to licensed wholesalers and manufacturers, provided, an Oklahoma winemaker may sell and ship wine produced at a winery in this state directly to retail package stores and restaurants in this state; to sell bottles of wine produced at the winery from grapes and other fruits and berries grown in this state, if available, to consumers on the premises of the winery; to serve visitors on the licensed premises free samples of wine produced on the premises; to serve free samples of wine produced at the winery at festivals and trade shows; to sell wine produced at the winery, in original sealed containers, at festivals and trade shows; to sell wine out of this state to qualified persons; to purchase from licensed winemakers, distillers and rectifiers in this state, and to import into this state wine, brandy and fruit spirits for use in manufacturing in accordance with federal laws and regulations.

D. A rectifier license shall authorize the holder thereof: To rectify spirits and wines, bottle, package, and store same on the licensed premises; to sell spirits and wines in this state to licensed wholesalers and manufacturers only; to sell spirits and wines out of this state to qualified persons; to purchase from licensed manufacturers in this state; and to import into this state for manufacturing purposes spirits and wines in accordance with federal laws and regulations.

E. A wholesaler license shall authorize the holder thereof: To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a nonresident seller license, and their agents who are the holders of manufacturers agent licenses; to purchase spirits and wines from licensed distillers, rectifiers, winemakers and wholesalers in this state; to sell spirits and wines in retail containers in this state to retailers, mixed beverage, caterer, special event, hotel beverage or airline/railroad beverage licensees; to sell spirits ~~and wines~~ in containers with a capacity of less than one-twentieth (1/20) gallon in full case lots and in the original unbroken case to hotel beverage or airline/railroad beverage licensees only; to sell wines in containers with a capacity of less than one-twentieth (1/20) gallon in full case lots and in the original unbroken case; to sell spirits and wines to wholesalers authorized to sell same; and to sell spirits and wines out of this state to qualified persons. Wholesalers shall be authorized to place such signs outside their place of business as are required by Acts of Congress and by such laws and regulations promulgated under such Acts.

A wholesaler license shall authorize the holder thereof to operate a single bonded warehouse with a single central office together with delivery facilities at a location in this state only at the principal place of business for which the wholesaler license was granted.

F. A Class B wholesaler license shall authorize the holder thereof: To purchase and import into this state beer from persons authorized to sell same who are the holders of nonresident seller

licenses, and their agents who are the holders of manufacturers agent licenses; to purchase beer from licensed brewers and Class B wholesalers in this state; to sell in retail containers to retailers, mixed beverage, caterer, special event, hotel beverage and airline/railroad beverage licensees in this state, beer which has been unloaded and stored at the holder's self-owned or leased and self-operated warehouse facilities for a period of at least twenty-four (24) hours before such sale; and to sell beer in this state to Class B wholesalers and out of this state to qualified persons, including federal instrumentalities and voluntary associations of military personnel on federal enclaves in this state over which this state has ceded jurisdiction.

G. A package store license shall authorize the holder thereof: To purchase ~~alcoholic beverages~~ alcohol, spirits and beer in retail containers with a capacity of more than one-twentieth (1/20) gallon and wine in retail containers with any capacity approved by the United States Bureau of Alcohol, Tobacco and Firearms from the holder of a brewer, wholesaler or Class B wholesaler license and to purchase wine produced at a winery in this state from an Oklahoma winemaker and to sell same on the licensed premises in such containers to consumers for off-premises consumption only and not for resale; provided, wine may be sold to charitable organizations that are holders of charitable auction licenses. All alcoholic beverages that are sold by a package store are to be sold at ordinary room temperature. No package store licensee may purchase or sell ~~alcoholic beverages~~ alcohol, spirits or beer in retail containers with a capacity of less than one-twentieth (1/20) gallon.

H. A mixed beverage license shall authorize the holder thereof: To purchase ~~alcoholic beverages~~ alcohol, spirits or beer in retail containers with a capacity of more than one-twentieth (1/20) gallon and wine in retail containers with a capacity approved by the United States Bureau of Alcohol, Tobacco and Firearms from the holder of a wholesaler or Class B wholesaler license or as specifically provided by law and to sell, offer for sale and possess mixed beverages for on-premises consumption only; provided, the holder of a mixed beverage license issued for an establishment which is also a restaurant may purchase wine produced at wineries in this state directly from an Oklahoma winemaker as provided in Section 3 of Article XXVIII of the Oklahoma Constitution.

Sales and service of mixed beverages by holders of mixed beverage licenses shall be limited to the licensed premises of the licensee unless the holder of the mixed beverage license also obtains a caterer license or a mixed beverage/caterer combination license. A mixed beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business. No mixed beverage license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title.

I. A bottle club license shall authorize the holder thereof: To store, possess and mix alcoholic beverages belonging to members of the club and to serve such alcoholic beverages for on-premises

consumption to club members. A bottle club license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized. A separate license shall be required for each place of business.

J. A caterer license shall authorize the holder thereof: To sell mixed beverages for on-premises consumption incidental to the sale or distribution of food at particular functions, occasions, or events which are temporary in nature. A caterer license shall not be issued in lieu of a mixed beverage license. A caterer license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business.

K. 1. An annual special event license shall authorize the holder thereof: To sell and distribute mixed beverages for consumption on the premises for which the license has been issued for up to four events to be held over a period not to exceed one (1) year, not to exceed two such events in any three-month period. For purposes of this paragraph, an event shall not exceed a period of ten (10) consecutive days. An annual special event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. The holder of an annual special event license shall provide written notice to the ABLE Commission of each special event not less than ten (10) days before the event is held.

2. A quarterly special event license shall authorize the holder thereof: To sell and distribute mixed beverages for consumption on the premises for which the license has been issued for up to three events to be held over a period not to exceed three (3) months. For purposes of this paragraph, an event shall not exceed a period of ten (10) consecutive days. A quarterly special event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. The holder of a quarterly special event license shall provide written notice to the ABLE Commission of each special event not less than ten (10) days before the event is held.

L. A hotel beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine, and 12-ounce malt beverage containers which are distributed from a hotel room mini-bar. A hotel beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A hotel beverage license shall only be issued to a hotel or motel as defined by Section 506 of this title which is also the holder of a mixed beverage license. Provided, that application may be made simultaneously for both such licenses. A separate license shall be required for each place of business.

M. An airline/railroad beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane or railroad

operated in compliance with a valid license, permit or certificate issued under the authority of the United States or this state, even though the airplane or train, in the course of its travel, may cross an area in which the sale of alcoholic beverages by the individual drink is not authorized and to store alcoholic beverages in sealed containers of any size at any airport or station regularly served by the licensee, in accordance with rules and regulations promulgated by the Alcoholic Beverage Laws Enforcement Commission. Alcoholic beverages purchased by the holder of an airline/railroad license from the holder of a wholesaler license shall be presumed to be purchased for consumption outside the State of Oklahoma or in interstate commerce, and shall be exempt from the excise tax provided for in Section 553 of this title.

N. An agent license shall authorize the holder thereof: To represent only the holders of licenses within this state, other than retailers, authorized to sell alcoholic beverages to retail dealers in Oklahoma, and to solicit and to take orders for the purchase of alcoholic beverages from retailers including licensees authorized to sell alcoholic beverages by the individual drink for on-premises consumption. Such license shall be issued only to agents and employees of the holder of a license under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title but no such license shall be required of an employee making sales of alcoholic beverages on licensed premises of the employee's principal. No person holding an agent license shall be entitled to a manufacturers agent license.

O. An employee license shall authorize the holder thereof: To work in a ~~brewery, distillery, winery,~~ package store, mixed beverage establishment, bottle club, or any establishment where alcohol~~,~~ or alcoholic ~~beverage, wine or beer is made, blended, rectified,~~ beverages are sold, mixed, or served. Persons employed by a mixed beverage licensee or a bottle club who do not participate in the service, mixing, or sale of mixed beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee or a bottle club shall be required to have an employee license whether or not the manager participates in the service, mixing or sale of mixed beverages. Applicants for an employee license must have a health card issued by the county in which they are employed, if the county issues such a card. Employees of special event, caterer or airline/railroad beverage licensees shall not be required to obtain an employee license. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to be placed in such devices shall be required to have an employee license.

P. An industrial license may be issued to persons desiring to import, transport, and use alcohol for the following purposes:

1. Manufacture of patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

2. Manufacture of extracts, syrups, condiments, and food products; and

3. For use in scientific, chemical, mechanical, industrial, and medicinal products and purposes.

No other provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol intended for industrial, medical, mechanical, or scientific use.

Any person receiving alcohol under authority of an industrial license who shall use, permit, or cause same to be used for purposes other than authorized purposes specified above, and all such alcohol, shall be liable to all provisions of the Oklahoma Alcoholic Beverage Control Act, including payment of tax thereon.

No provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol withdrawn by any person free of federal tax under a tax-free permit issued by the United States government, if such alcohol is received, stored, and used as authorized by federal laws.

Q. A carrier license may be issued to any common carrier operating under a certificate of convenience and necessity issued by any duly authorized federal or state regulatory agency. Such license shall authorize the holder thereof to transport alcoholic beverages into, within, and out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations.

R. A private carrier license may be issued to any carrier other than a common carrier described in subsection P of this section. Such license shall authorize the holder thereof to transport alcoholic beverages into, within, or out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations. No carrier license or private carrier license shall be required of licensed brewers, distillers, winemakers, rectifiers, wholesalers, or Class B wholesalers, to transport alcoholic beverages from the place of purchase or acquisition to the licensed premises of such licensees and from such licensed premises to the licensed premises of the purchaser in vehicles owned or leased by such licensee when such transportation is for a lawful purpose and not for hire.

No carrier license or private carrier license shall be required of the holder of a package store, mixed beverage, caterer, special event, hotel beverage or airline/railroad license to pick up alcoholic beverage orders from the licensees' wholesaler or Class B wholesaler from whom they are purchased, and to transport such alcoholic beverages from the place of purchase or acquisition to the licensed premise of such licensees in vehicles owned or under the control of such licensee or a licensed employee of such licensee under such terms, conditions, limitations and restrictions as the ABLE Commission may prescribe.

S. A bonded warehouse license shall authorize the holder thereof: To receive and store alcoholic beverages for the holders of storage licenses on the licensed premises of the bonded warehouse licensee. No goods, wares or merchandise other than alcoholic

beverages may be stored in the same bonded warehouse with alcoholic beverages. The holder of a bonded warehouse license shall furnish and file with the ABLE Commission a bond running to all bailers of alcoholic beverages under proper storage licenses and their assignees (including mortgagees or other bona fide lienholders) conditioned upon faithful performance of the terms and conditions of such bailments.

T. A storage license may be issued to a holder of a brewer, distiller, winemaker, rectifier, wholesaler, Class B wholesaler, nonresident seller, package store, mixed beverage, caterer, or hotel beverage license, and shall authorize the holder thereof: To store alcoholic beverages in a public warehouse holding a bonded warehouse license, and no goods, wares or merchandise other than alcoholic beverages may be stored in the same warehouse with alcoholic beverages in private warehouses owned or leased and operated by such licensees elsewhere than on their licensed premises. Provided:

1. A storage license issued to a Class B wholesaler shall permit the storage of light beer and permit the sale and delivery to retailers from the premises covered by such license;

2. Any licensee who is the holder of a mixed beverage/caterer combination license or the holder of a mixed beverage license and a hotel beverage license who is issued a storage license shall store all inventories of alcoholic beverages either on the premises of the mixed beverage establishment or in the warehouse;

3. A storage license shall not be required for a special event licensee storing alcoholic beverages for use at a subsequent event; and

4. Notwithstanding the provisions of subsection H of this section or any other provision of this title, a licensee who wholly owns more than one licensed mixed beverage establishment may store alcoholic beverages for each of the licensed establishments in one location under one storage license. Alcoholic beverages purchased and stored pursuant to the provisions of a storage license, for one licensed mixed beverage establishment may be transferred by a licensee to another licensed mixed beverage establishment which is wholly owned by the same licensee. Notice of such a transfer shall be given in writing to the Oklahoma Tax Commission and the ABLE Commission within three (3) business days of the transfer. The notice shall clearly show the quantity, brand and size of every transferred bottle or case.

U. A sacramental wine supplier license shall authorize the holder thereof: To sell, ship or deliver sacramental wine to any religious corporation or society of this state holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1986, and listed as an exempt organization in Section 501(c)(3) of the Internal Revenue Code, 1986, of the United States, as amended.

V. A beer and wine license shall authorize the holder thereof: To purchase beer and wine in retail containers with a capacity of more than one-twentieth (1/20) gallon from the holder of a

wholesaler or Class B wholesaler license or as specifically provided by law and to sell, offer for sale and possess beer and wine for on-premises consumption only; provided, the holder of a beer and wine license issued for an establishment which is also a restaurant may purchase wine produced at wineries in this state directly from an Oklahoma winemaker as provided in Section 3 of Article XXVIII of the Oklahoma Constitution.

Sales and service of beer and wine by holders of beer and wine licenses shall be limited to the licensed premises of the licensee unless the holder of the beer and wine license also obtains a caterer license. A beer and wine license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business. No beer and wine license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title. No spirits shall be stored, possessed or consumed on the licensed premises of a beer and wine licensee.

W. A charitable auction license may be issued to a charitable organization exempt from taxation under Section 501(c)(3), (4), (5), (7), (8), (9), (10), or (19) of the United States Internal Revenue Code. The license shall authorize the holder thereof to auction wine purchased from a retail package store or received as a gift from an individual, if the auction is conducted to raise funds for charitable purposes. The license shall be issued for a period not exceeding two (2) days. Only one such license may be issued to an organization in any twelve-month period. The maximum amount of wine auctioned pursuant to the license shall not exceed fifty (50) gallons. All wines auctioned shall be registered and all fees and taxes shall be paid in accordance with the Oklahoma Alcoholic Beverage Control Act. The auction may be either a live auction conducted by an auctioneer or a silent auction for which bid sheets are accepted from interested bidders.

X. A mixed beverage/caterer combination license shall authorize the holder thereof: To purchase or sell mixed beverages as specifically provided by law for the holder of a mixed beverage license or a caterer license. All provisions of the Oklahoma Alcoholic Beverage Control Act applicable to mixed beverage licenses or caterer licenses, or the holders thereof, shall also be applicable to mixed beverage/caterer combination licenses or the holders thereof, except where specifically otherwise provided. A mixed beverage/caterer combination license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business.

SECTION 7. AMENDATORY 37 O.S. 2001, Section 553, as amended by Section 28, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2002, Section 553), is amended to read as follows:

Section 553. A. ~~An~~ Except as provided in paragraph 6 of this subsection, an excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or

distribution, or used or possessed in this state~~, or imported or manufactured for export out of this state~~ at the following rates:

1. One Dollar and forty-seven cents ($1.47) per liter, and a proportionate rate on fractions thereof, on each liter of spirits;

2. Nineteen cents ($0.19) per liter, and a proportionate rate on fractions thereof, on each liter of light wine;

3. Thirty-seven cents ($0.37) per liter, and a proportionate rate on fractions thereof, on each liter of wine containing more than fourteen percent (14%) of alcohol by volume;

4. Fifty-five cents ($0.55) per liter, and a proportionate rate on fractions thereof, on each liter of sparkling wine; ~~and~~

5. Twelve Dollars and fifty cents ($12.50) per barrel (thirty-one (31) wine gallons) and a proportionate rate on portions thereof, on each barrel of beer; and

6. Beer manufactured in this state for export shall not be taxed.

B. The excise tax levied on alcoholic beverages except beer under subsection A of this section shall be paid as follows:

1. Payment of the excise tax levied by this section with respect to all alcoholic beverages, other than beer, shall be made by the person shipping the same into Oklahoma, or in the case of direct imports from foreign countries by the importer, or in the case of alcoholic beverages manufactured in Oklahoma by the first seller thereof;

2. On and after January 1, 1981, the due and payable excise tax levied by this section shall be made by tax returns filed with the Oklahoma Tax Commission. The tax returns shall be made under oath by the person liable for the tax on forms prescribed and provided by the Oklahoma Tax Commission and shall be accompanied by payment of the taxes due and any additional sums due as provided by this section. Invoices describing all alcoholic beverages as described in this section which are shipped into this state or which are first sold in this state shall be delivered to the Oklahoma Tax Commission and to the Alcoholic Beverage Laws Enforcement Commission immediately following shipment of liquors into the state or delivery to the first purchaser. Tax returns and payment of excise tax and other sums due shall be delivered to the Oklahoma Tax Commission no later than the tenth day of the month immediately succeeding the month of shipment, importation or first sale of the alcoholic beverages as provided in paragraph 1 of this subsection;

3. All tax returns required to be filed during the twelve-month period beginning January 1, 1981, shall be accompanied by payment of the excise tax due plus an additional payment in the amount of twenty percent (20%) of said tax. Up to ten percent (10%) of the total payments made during said period may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title; and

4. On and after February 1, 1982, each person required to file a tax return pursuant to this section shall remit the excise tax due, less an amount not to exceed two percent (2%) of the total of the additional payments made by said taxpayer pursuant to paragraph 3 of this subsection. The total of said deductions shall not exceed the total of the additional payments made pursuant to paragraph 3 of this subsection. Up to ten percent (10%) of each tax payment made under this subsection may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title.

C. For the purpose of collecting and remitting the excise tax imposed under this section, the person liable for such tax is hereby declared to be the agent of the state for such purposes.

D. Nothing herein shall be construed to impose an additional excise tax on intoxicating beverages held in inventory by wholesalers and retailers upon which the excise tax was paid prior to the effective date of any excise tax increase.

SECTION 8. AMENDATORY 37 O.S. 2001, Section 573, is amended to read as follows:

Section 573. A. ~~No~~ Except as provided in subsection D of this section, no liquor, wine, or beer shall be labeled, offered or advertised for sale unless in accordance with such regulations and unless the brand label shall have been registered with and approved by the Alcoholic Beverage Laws Enforcement Commission and the appropriate fee paid as provided for in this section.

B. An application for registration of a brand label shall be filed by the owner of the brand if such owner is licensed by the ABLE Commission, however, if the owner is not licensed but is represented by a licensed nonresident seller, the nonresident seller licensee shall submit each label for each product he offers for sale in this state. Cordials and wines which differ only as to age or vintage year, as defined by such regulations, shall be considered the same brand; and those that differ as to type or class may be considered the same brand by the ABLE Commission where consistent with the purposes of this section.

C. The application for registration of a brand label shall be filed on a form prescribed by the ABLE Commission, and shall contain such information as the ABLE Commission shall require. Such application shall be accompanied by a certified check, bank officers' check or draft, or money order in the amount of the annual registration fee prescribed by this section.

D. The annual fee for registration of any brand label for liquor shall be Three Hundred Seventy-five Dollars ($375.00); the annual fee for registration of any brand label for beer shall be Two Hundred Dollars ($200.00); the annual fee for registration of any brand label for wine shall be Two Hundred Dollars ($200.00). Beer manufactured in this state shall be exempt from brand label registration fees.

Each brand label registered and approved pursuant to this section shall be valid for a term which shall run concurrently with the term of the license of the brand owner, or nonresident seller representing the brand owner, registering such label and shall be valid for such licensee and shall not be transferable.

E. If the ABLE Commission shall deny the application for registration of a brand label it shall return the registration fee to the applicant, less twenty-five percent (25%) of such fee.

F. The ABLE Commission may at any time exempt any discontinued brand from fee provisions of this section where a manufacturer or wholesaler has an inventory of one hundred cases or less of liquor or wine and five hundred cases or less of beer, and certifies to the ABLE Commission in writing that such brand is being discontinued.

SECTION 9. This act shall become effective November 1, 2003.

Passed the Senate the 29th day of May, 2003.

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Presiding Officer of the Senate

Passed the House of Representatives the 29th day of May, 2003.

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Presiding Officer of the House
of Representatives