

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 2194

By: Morgan

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5
6 AS INTRODUCED

7 An Act relating to intoxicating liquors; amending 37
8 O.S. 2001, Section 163.7, as last amended by Section
9 25, Chapter 5, O.S.L. 2004 (37 O.S. Supp. 2006,
10 Section 163.7), which relates to permits; providing
11 certain exemption to license requirement; amending 37
12 O.S. 2001, Section 163.11, as last amended by Section
13 7, Chapter 61, O.S.L. 2006 (37 O.S. Supp. 2006,
14 Section 163.11), which relates to county permits;
15 expanding eligibility for certain special event
16 permit; and declaring an emergency.

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

18 SECTION 1. AMENDATORY 37 O.S. 2001, Section 163.7, as
19 last amended by Section 25, Chapter 5, O.S.L. 2004 (37 O.S. Supp.
20 2006, Section 163.7), is amended to read as follows:

21 Section 163.7 ~~In~~ Except as provided in paragraph 4 of this
22 section, in addition to the excise tax payable under Section 163.1
23 et seq. of this title, and in addition to the license required to be
24 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

1 beer; provided, any such permit issued prior to November 1, 1995,
2 with respect to low-point beer shall be valid until it expires:

3 1. Manufacturers: Every manufacturer, located and doing
4 business in this state, shall, before commencing the manufacture of
5 low-point beer, obtain from the Tax Commission a permit to engage in
6 such manufacture. As a condition of the issuance of this permit,
7 such manufacturer shall pay to the Tax Commission a license tax of
8 Four Hundred Fifty Dollars (\$450.00), which shall cover a three-year
9 period commencing with the effective date of such permit. This
10 permit must be renewed and the license tax paid thereafter at the
11 expiration of the preceding permit and license tax period. Each and
12 every other manufacturer of such beverages, coming within the
13 provisions of Section 163.1 et seq. of this title, shall before
14 selling or offering for sale such beverages within the State of
15 Oklahoma, qualify with the Secretary of State of the State of
16 Oklahoma for a permit to do business within the State of Oklahoma
17 and, after so qualifying, shall obtain a permit or license from the
18 Tax Commission and, in addition to any other license, taxes or fees,
19 pay therefor a license tax of Five Hundred Dollars (\$500.00), which
20 shall cover a one-year period commencing with the effective date of
21 such permit. The permit or license shall be for the privilege of
22 doing business in Oklahoma as a manufacturer of low-point beer. The
23 permit must be renewed and the license tax paid annually thereafter
24 at the expiration of the preceding permit and license tax period.

1 The receipt of payment of such permit or license shall be on file
2 with the Tax Commission before such manufacturer shall sell, or
3 offer for sale, such beverages to any person within the State of
4 Oklahoma. Provided, a manufacturer located and doing business in
5 this state may sell not more than five thousand (5,000) barrels
6 annually of its own products directly to consumers by procuring a
7 retail license.

8 Every manufacturer, located and doing business outside the State
9 of Oklahoma, desiring to pay the excise tax on sales to retail
10 dealers, as provided for in Section 163.1 et seq. of this title,
11 shall procure annually a permit and pay annually the license tax
12 required of wholesalers, as provided for under this section. The
13 payment of such fee shall be in addition to the payment of the
14 license fee or tax in the sum of Five Hundred Dollars (\$500.00) as
15 provided herein;

16 2. Wholesalers: Every wholesaler, located and doing business
17 in this state, must annually obtain from the Tax Commission a permit
18 to sell low-point beer. As a condition of the issuance of this
19 permit, such wholesaler shall pay to the Tax Commission a license
20 fee of Two Hundred Fifty Dollars (\$250.00) which shall cover a one-
21 year period commencing with the effective date of such permit. The
22 permit must be renewed and the license tax paid annually thereafter
23 at the expiration of the preceding permit and license tax period.
24 The fee shall be reduced by seventy-five percent (75%) if the

1 applicant is a holder of a license to manufacture low-point beer and
2 is located and doing business in this state.

3 Every wholesaler, located and doing business outside the state
4 desiring to pay the excise tax on sales to retail dealers, as
5 provided for in Section 163.1 et seq. of this title, shall procure
6 annually a permit and pay annually the license tax required of
7 wholesalers located and doing business in this state.

8 Wholesalers within this state shall be required to secure an
9 annual permit and must pay an annual license tax for each city or
10 incorporated town from which deliveries of low-point beer are made
11 to retail dealers.

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

15 3. Retail Dealers: Every retail dealer shall, before offering
16 low-point beer for sale to the public, obtain from the Tax
17 Commission a permit to engage in such sales, and shall pay to the
18 Tax Commission, in advance of the issuance of the permit, the
19 license tax, as follows:

20 a. each retail dealer who sells low-point beer, on
21 draught and in original packages, for consumption on
22 or off the premises, shall obtain a permit which shall
23 be valid for a period of three (3) years and shall pay
24 a license tax of Four Hundred Dollars (\$400.00) for

1 every permit issued or renewed on or after July 1,
2 2003, but prior to July 1, 2006, of which One Hundred
3 Dollars (\$100.00) shall be deposited in the Community-
4 based Substance Abuse Revolving Fund established in
5 Section 2 of this act. The fee for every permit
6 issued or renewed on or after July 1, 2006, shall be
7 Five Hundred Dollars (\$500.00), of which Two Hundred
8 Dollars (\$200.00) shall be deposited in the Community-
9 based Substance Abuse Revolving Fund,

- 10 b. each retail dealer who sells such beverages in
11 original packages only for consumption on or off the
12 premises shall obtain a permit which shall be valid
13 for a period of three (3) years and shall pay a
14 license tax of Two Hundred Fifty Dollars (\$250.00) for
15 each permit issued or renewed on or after July 1,
16 2003, but before July 1, 2006, of which One Hundred
17 Dollars (\$100.00) shall be deposited in the Community-
18 based Substance Abuse Revolving Fund. The fee for
19 every permit issued on or after July 1, 2006, shall be
20 Three Hundred Fifty Dollars (\$350.00), of which Two
21 Hundred Dollars (\$200.00) shall be deposited in the
22 Community-based Substance Abuse Revolving Fund,
- 23 c. each retail dealer who sells low-point beer purchased
24 from a licensed manufacturer or licensed wholesaler

1 for consumption on or off the premises and who sells
2 low-point beer manufactured by the retail dealer for
3 consumption on or off the premises shall obtain a
4 permit which shall be valid for a period of three (3)
5 years and shall pay a license fee of Five Hundred
6 Fifty Dollars (\$550.00) for each permit issued or
7 renewed on or after July 1, 2003, but before July 1,
8 2006, of which One Hundred Dollars (\$100.00) shall be
9 deposited in the Community-based Substance Abuse
10 Revolving Fund. The fee for every permit issued on or
11 after July 1, 2006, shall be Six Hundred Fifty Dollars
12 (\$650.00), of which Two Hundred Dollars (\$200.00)
13 shall be deposited in the Community-based Substance
14 Abuse Revolving Fund. Provided, a retail dealer
15 licensed pursuant to this subparagraph shall not
16 manufacture more than five thousand (5,000) barrels of
17 low-point beer per year. A retail dealer, that has
18 obtained a permit pursuant to this subparagraph, may
19 sell low-point beer manufactured by the retail dealer,
20 at any of the retail dealer's places of business, as
21 defined in Section 163.8 of this title, or any other
22 place owned and operated by an entity which has common
23 owners with the licensed dealer, regardless of which
24 place of business brews the beverage. "Common owners"

1 means that the owners at each place or entity together
2 own more than fifty percent (50%) of the interest in
3 each place or entity that has a permit issued pursuant
4 to this subparagraph. A retail dealer, that has
5 obtained a permit pursuant to this subparagraph, may
6 sell low-point beer manufactured by the same retailer
7 pursuant to special licenses issued pursuant to
8 subparagraph d of this paragraph,

9 d. special licenses, as provided, may be issued for the
10 sum of Five Dollars (\$5.00) per day for each license;
11 provided, that in the event any state or county fair
12 association shall meet for more than five (5) days in
13 any year, a special license for the sale of such
14 beverages shall be issued for the sum of Twenty-five
15 Dollars (\$25.00),

16 e. each retail dealer who sells such beverages in
17 original packages and not for consumption on the
18 premises, shall obtain a permit which shall be valid
19 for a period of three (3) years and shall pay a
20 license tax of One Hundred Thirty Dollars (\$130.00)
21 for each permit issued or renewed on or after July 1,
22 2003, but prior to July 1, 2006, of which One Hundred
23 Dollars (\$100.00) shall be deposited in the Community-
24 based Substance Abuse Revolving Fund. The fee for

1 every permit issued or renewed on or after July 1,
2 2006, shall be Two Hundred Thirty Dollars (\$230.00),
3 of which Two Hundred Dollars (\$200.00) shall be
4 deposited in the Community-based Substance Abuse
5 Revolving Fund. It shall be unlawful for such off-
6 premise dealer to allow any bottle, can, or original
7 package to be broken or opened, or to allow any of
8 such low-point beer to be consumed, in or upon the
9 premises described in such permit; provided, however,
10 a manufacturer located and doing business in this
11 state and selling its own products for off-premises
12 consumption may serve visitors on the premises free
13 samples of low-point beer produced on the premises
14 provided such samples shall not exceed twelve (12)
15 fluid ounces per customer per visit,

16 f. a retail dealer who has obtained a permit pursuant to
17 this paragraph and who ceases to offer low-point beer
18 for sale to the public shall be entitled to receive a
19 refund of the permit fee from the Tax Commission
20 prorated with respect to the amount of time remaining
21 until expiration of the permit, upon surrender of the
22 permit to the Oklahoma Tax Commission. The manner and
23 prorated refund shall be prescribed by the Tax
24 Commission, and

1 g. a retail dealer who has obtained a permit pursuant to
2 this paragraph prior to July 1, 2003, shall not be
3 subject to the increased fees provided for in
4 subparagraphs a, b, c or e until the permit is
5 renewed.

6 4. Organizations that would otherwise be required to obtain a
7 permit under this section are exempt from the requirements of this
8 section if they meet the following:

9 a. the license would only be used once a year by the
10 organization at an annual festival or event,

11 b. the organization has obtained the permit required by
12 Section 163.11 of this title, and

13 c. the annual event lasts no longer than ten (10) days
14 which must be consecutive.

15 SECTION 2. AMENDATORY 37 O.S. 2001, Section 163.11, as
16 last amended by Section 7, Chapter 61, O.S.L. 2006 (37 O.S. Supp.
17 2006, Section 163.11), is amended to read as follows:

18 Section 163.11 A. It shall be unlawful for any person to
19 maintain or operate any place where low-point beer, as herein
20 defined, is sold for consumption on or off the premises without
21 first securing a permit issued by the district court clerk of the
22 county in which the premises are located.

23 B. 1. The person applying for a permit must file a verified
24 application every three (3) years and that he or she has never been

1 convicted of violating any of the laws prohibiting the traffic in
2 any spirituous, vinous, fermented or malt liquors, or of any of the
3 gambling laws of this state, or of any other state of the United
4 States, within three (3) years immediately preceding the date of his
5 or her petition, or any of the laws commonly called "Prohibition
6 Laws", or had any permit or license to sell low-point beer revoked
7 in any county of this state within twelve (12) months.

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

12 C. No permit shall be issued to sell low-point beer for on-
13 premises consumption unless the person applying for such permit
14 shall have signed an affidavit stating that the location of the
15 building in which low-point beer is to be sold is not prohibited by
16 the provisions of Section 163.27 of this title.

17 D. A fee of One Hundred Fifty Dollars (\$150.00) shall be
18 charged for the issuance or renewal of such three-year permit, which
19 fee shall be deposited in the county court fund, in addition to
20 other fees required by law.

21 E. Upon petition being filed, the district court clerk shall
22 give fifteen (15) days' notice for an initial application, and it is
23 the applicant's responsibility to cause the same to be posted by the
24 entrance on the front of the building in which said low-point beer

1 is to be sold and to file proof of posting in such case; and a copy
2 of said notice shall also be mailed to the district attorney, the
3 sheriff and the chief of police or marshal of any city or town in
4 which said business is to be operated. Said notice shall contain
5 the name of the applicant and the location of said place of
6 business. The initial permit shall be valid for a period of three
7 (3) years and shall expire if not renewed with proper showing
8 required by subsection B of this section, and upon payment of proper
9 fees. A permit may be renewed within ten (10) days of expiration,
10 upon proper application pursuant to subsection B of this section and
11 payment of the proper fees, but without the payment of any late
12 fees. Provided, however, that if a proper application under
13 subsection B of this section is filed within eleven (11) days but
14 not more than thirty (30) days after the expiration date of the
15 permit, upon payment of a fee of One Hundred Dollars (\$100.00) in
16 addition to the initial permit fee, the court clerk is authorized to
17 treat said application as one for renewal and to issue a renewal
18 permit to the applicant, if all requirements have otherwise been met
19 by the applicant. A renewal permit granted during the thirty-day
20 grace period shall become effective upon the date of its issuance by
21 the court clerk.

22 F. A permit issued prior to September 1, 1994, shall be valid
23 until it expires and shall be renewed for a period of three (3)
24 years or until expiration of the sales tax permit issued by the

1 Oklahoma Tax Commission, if any, held by the person at the time of
2 such renewal, whichever is earlier. The manner and prorated fee for
3 renewals of less than three (3) years shall be prescribed by the
4 court clerk.

5 G. A person who has obtained a permit pursuant to this section
6 and who ceases to maintain or operate any place where low-point beer
7 is sold for consumption on or off the premises shall be entitled to
8 receive a refund of the permit fee from the district court clerk
9 prorated with respect to the amount of time remaining until
10 expiration of the permit, upon surrender of the existing permit to
11 the district court clerk. The manner and prorated refund shall be
12 prescribed by the Administrative Director of the Courts.

13 H. If there are no protests and the petition is sufficient on
14 its face, then said permit shall be granted by the district court
15 clerk. Provided, that if any citizen of the county files a written
16 protest setting forth objections, then the district court clerk
17 shall advise the chief judge who shall assign such petition to a
18 district judge or associate district judge for hearing.

19 I. The application for such permit must be verified and in
20 writing, contain the information above required, and must be set for
21 hearing on a date named in the notice required to be posted.

22 J. All testimony before the district court shall be under oath.
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1 K. A judge of the district court, upon five (5) days' notice to
2 the person holding such permit, shall revoke such permit for any one
3 of the following reasons:

4 1. Drunkenness of the person holding such permit or permitting
5 any intoxicated person to loiter in or around his or her place of
6 business;

7 2. Person under the influence of drugs holding such permit or
8 permitting any drugged person to loiter in or around his or her
9 place of business;

10 3. The sale to any person under twenty-one (21) years of age of
11 low-point beer;

12 4. Permitting persons under the age of twenty-one (21) in a
13 separate or enclosed bar area which has as its main purpose the
14 selling or serving of low-point beer for consumption on the
15 premises, in violation of the provisions of Sections 241 through 246
16 of this title;

17 5. Nonpayment of any of the taxes or license fees imposed by
18 the provisions of Section 163.1 et seq. of this title on complaint
19 of the Oklahoma Tax Commission;

20 6. Violating any of the laws of the state commonly called
21 "Prohibition Laws" or violating any of the gambling laws of the
22 state or permitting anyone to violate any of said laws in such
23 places or violating any of the provisions of Section 163.1 et seq.
24 of this title;

1 7. Conviction for the violation of any of the laws of this
2 state or the United States for the sale or possession of
3 intoxicating liquors within three (3) years immediately preceding
4 the issuance of such dealer's license; or

5 8. Violating any law pertaining to the use, possession, or sale
6 of drugs or narcotics or the violation of the narcotics laws of the
7 State of Oklahoma or the United States.

8 L. After the revocation of any such permit, for any of the
9 above reasons, except paragraph 5 of subsection K of this section
10 for nonpayment of taxes, or license fees, or except as otherwise
11 provided in this subsection, no new permit shall be issued to the
12 same person or to a relative of such person for the same location or
13 premises prior to the expiration of a period of one (1) year from
14 the date of such revocation. Upon the fourth or subsequent
15 revocation of a permit for a violation of paragraph 3 or 4 of
16 subsection K of this section, no new permit shall be issued to the
17 same person or to a relative of such person for the same location or
18 premises prior to the expiration of a period of three (3) years from
19 the date of such revocation.

20 M. On or before the tenth day of each month each district court
21 clerk shall file with the Oklahoma Tax Commission, on forms
22 prescribed and furnished by the Commission, a report showing the
23 name, address, and county permit number of each such person to whom
24 a county permit has been issued or whose permit has been revoked, or

1 who shall have been refused a county permit, during the previous
2 calendar month. In case of the revocation of a permit by a judge of
3 the district court, the district court clerk shall within five (5)
4 days report such action to the Oklahoma Tax Commission. If county
5 permits shall have been issued, revoked or refused during the month,
6 the district court clerk shall make a report accordingly to the
7 Commission.

8 N. Upon application to and approval by the court clerk of the
9 district court, an organization once annually or a retail dealer as
10 defined by Section 163.2 of this title who meets the requirements of
11 this section and Section 163.11a of this title, may be granted a
12 special event permit without the requirement of notice or posting,
13 after payment of a fee of Twenty-five Dollars (\$25.00) in addition
14 to other fees required by law, which fees shall not be refundable or
15 apportionable. A special event permit issued under this subsection
16 shall authorize the holder thereof to sell and distribute low-point
17 beer for a period not to exceed ten (10) consecutive days from the
18 date of issuance. A separate permit shall be required for each
19 individual place of business, whether permanent or a temporary
20 assemblage. Provided, retail dealers shall not be required to
21 obtain a special permit for each bar or service unit within the same
22 enclosed area or within the general vicinity of each other for
23 events held outside a physical structure. A special event permit
24 shall not be renewable. A municipality shall not, by ordinance or

1 otherwise, refuse to issue a special event permit or special event
2 license on the basis that the applicant already possesses a permit
3 or license in the applicant's same name.

4 O. That the person demanded, was shown, and reasonably relied
5 upon proof of age shall be a rebuttable presumption to any action
6 brought pursuant to this section. A person cited for violating this
7 section shall be deemed to have reasonably relied upon proof of age,
8 and such person shall not be found guilty of such violation if:

9 1. The individual who purchased or received the low-point beer
10 presented what a reasonable person would have believed was a driver
11 license or other government-issued photo identification purporting
12 to establish that such individual was twenty-one (21) years of age
13 or older; or

14 2. The person cited for the violation confirmed the validity of
15 the driver license or other government-issued photo identification
16 presented by such individual by performing a transaction scan by
17 means of a transaction scan device.

18 Provided, that this defense shall not relieve from liability any
19 person cited for a violation of this section if such person failed
20 to exercise reasonable diligence to determine whether the physical
21 description and picture on the driver license or other government-
22 issued photo identification was that of the individual who presented
23 it. The availability of the defense described in this subsection

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1 does not affect the availability of any other defense under any
2 other provision of law.

3 SECTION 3. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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