

**EHB 2348**

**THE STATE SENATE**  
**Wednesday, March 31, 2010**

**ENGROSSED**

**House Bill No. 2348**

**As Amended**

ENGROSSED HOUSE BILL NO. 2348 - By: Schwartz, Williams and Dorman of the House and Schulz of the Senate.

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Sections 163.1, 163.3, as amended by Section 1, Chapter 484, O.S.L. 2003, 505 and 554 (37 O.S. Supp. 2009, Section 163.3), which relate to manufacturing beer; authorizing the making of low-point beer for personal use; limiting quantity of low-point beer made annually for personal use; prohibiting sale of certain low-point beer; exempting certain low-point beer from certain excise tax; making language gender neutral; clarifying language; requiring a personal use permit for production of certain beverages; deleting obsolete penalty provisions; authorizing the Alcoholic Beverage Laws Enforcement Commission to issue personal use permits for certain purpose; setting minimum age for application for certain permit; setting volume limitation for certain beverages; defining term; prohibiting sale of certain beverages; adding beer to certain tax exemption; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 163.1, is amended to read as follows:

Section 163.1 All beverages containing more than three and two-tenths percent (3.2%) alcohol by weight and all mixed beverage coolers, as defined in Section 506 of this title, regardless of percent of alcoholic content, are hereby declared to be

1 intoxicating. All beverages containing more than one-half of one  
2 percent (1/2 of 1%) alcohol by volume and not more than three and  
3 two-tenths percent (3.2%) alcohol by weight are hereby declared to  
4 be low-point beer. Wherever the term "nonintoxicating beverage" or  
5 "nonintoxicating malt beverage" appears in the Oklahoma Statutes,  
6 such term shall be construed to mean low-point beer. The  
7 manufacture, distribution and sale of low-point beer, including but  
8 not limited to beer or cereal malt beverages, are hereby declared  
9 subject to the provisions of Section 163.1 et seq. of this title.  
10 Provided, that nothing herein shall prevent a person from making  
11 low-point beer, as defined by Section 163.2 of this title, by simple  
12 fermentation for personal use if the maker of such beverages has  
13 first applied for and possesses a valid personal use permit issued  
14 by the Alcoholic Beverage Laws Enforcement Commission, as provided  
15 in Section 4 of this act, and the total volume of low-point beer  
16 produced in any given calendar year is less than two hundred (200)  
17 gallons. No beverage made pursuant to a personal use permit shall  
18 be sold or offered for sale.

19 SECTION 2. AMENDATORY 37 O.S. 2001, Section 163.3, as  
20 amended by Section 1, Chapter 484, O.S.L. 2003 (37 O.S. Supp. 2009,  
21 Section 163.3), is amended to read as follows:

22 Section 163.3 There is hereby levied on all low-point beer  
23 containing more than one-half of one percent (1/2 of 1%) of alcohol

1 measured by volume and not more than three and two-tenths percent  
2 (3.2%) of alcohol measured by weight which are manufactured and  
3 sold, or removed for consumption or sale, within this state a tax of  
4 Eleven Dollars and twenty-five cents (\$11.25) for every barrel  
5 containing not more than thirty-one (31) gallons, and at a like rate  
6 of tax for any other quantities or for a fractional part of a  
7 barrel. Provided, any low-point beer manufactured in this state for  
8 export or produced pursuant to a valid personal use permit issued by  
9 the Alcoholic Beverage Laws Enforcement Commission pursuant to  
10 Section 4 of this act shall not be taxed ~~under~~ as provided in this  
11 section.

12 Each wholesaler making reports and remittances to the Oklahoma  
13 Tax Commission shall be allowed the sum of one percent (1%) of the  
14 tax remittances collected for maintaining and collecting ~~said~~ the  
15 tax for the benefit of this state.

16 Machinery and equipment directly used in the manufacture within  
17 this state of low-point beer taxed pursuant to the provisions of  
18 this section shall be exempt from taxation under any other law of  
19 this state levying a sales or consumers or use tax.

20 SECTION 3. AMENDATORY 37 O.S. 2001, Section 505, is  
21 amended to read as follows:

22 Section 505. A. No person shall manufacture, rectify, sell,  
23 possess, store, import into or export from this state, transport, or

1 deliver any alcoholic beverage except as specifically provided in  
2 the Oklahoma Alcoholic Beverage Control Act. Provided, that nothing  
3 herein shall prevent the possession and transportation of alcoholic  
4 beverages for the personal use of the possessor, and his or her  
5 family and guests, so long as the Oklahoma excise tax has been paid  
6 thereon, except for beer. Provided, further, that nothing herein  
7 shall prevent ~~the~~ a person from making of beer, as defined by  
8 Section 506 of this title, cider, or of wine, not to exceed two  
9 hundred (200) gallons in any one (1) year pursuant to a license  
10 first obtained from the Alcoholic Beverage Laws Enforcement  
11 Commission, as defined by Section 506 of this title, by simple  
12 fermentation and without distillation, for personal use if made  
13 solely for the use of the maker, his family and guests of such  
14 beverages has first applied for and possesses a valid personal use  
15 permit issued by the Alcoholic Beverage Laws Enforcement Commission  
16 as provided in Section 4 of this act and the total volume of beer,  
17 cider or wine produced in any given calendar year is less than two  
18 hundred (200) gallons. No beverages made pursuant to a personal use  
19 permit shall be sold or offered for sale.

20 B. 1. Any duly licensed physician or dentist may possess and  
21 use alcoholic beverages in the strict practice of ~~his~~ the profession  
22 and any hospital or other institution caring for sick ~~and~~ or  
23 diseased persons may possess and use alcoholic beverages for the

1 treatment of bona fide patients of such hospital or institution.  
2 Any drugstore employing a licensed pharmacist may possess and use  
3 alcoholic beverages in the preparation of prescriptions of duly  
4 licensed physicians.

5 2. The possession, transportation and dispensation of wine by  
6 any authorized representative of any church for the conducting of a  
7 bona fide rite or religious ceremony conducted by such church shall  
8 not be prohibited by the Oklahoma Alcoholic Beverage Control Act;  
9 nor shall ~~said~~ such act prevent the sale, shipping or delivery of  
10 sacramental wine by any person holding a sacramental wine supplier  
11 license issued pursuant to the Oklahoma Alcoholic Beverage Control  
12 Act to any religious corporation or society of this state holding a  
13 valid exemption from taxation issued pursuant to Section 501(a) of  
14 the Internal Revenue Code, 1954, and listed as an exempt  
15 organization in Section 501(c)(3) of the Internal Revenue Code,  
16 1954, of the United States, as amended.

17 3. Provided further, that nothing in the Oklahoma Alcoholic  
18 Beverage Control Act shall prevent the possession, transportation  
19 and sale of alcoholic beverages, including beer as defined by  
20 Section 506 of this title and beer containing not more than three  
21 and two-tenths percent (3.2%) of alcohol by weight, within military  
22 reservations and in accordance with the laws, rules and regulations

1 governing such military reservations, provided that the Oklahoma  
2 excise tax has been paid on spirits and wines.

3 C. 1. Except as otherwise authorized by law, it is unlawful  
4 for any manufacturer, wholesaler or retailer of alcoholic beverages,  
5 located and doing business from outside this state, to make retail  
6 sales of alcoholic beverages to purchasers located in this state or  
7 to ship alcoholic beverages sold at retail to persons located in  
8 this state. Any person who engages in the sale or shipping of  
9 alcoholic beverages in violation of the provisions of this  
10 subsection ~~on or after the effective date of Section 20.1 of Title~~  
11 ~~21 of the Oklahoma Statutes~~, upon conviction, shall be guilty of a  
12 ~~Schedule G felony if the sale or delivery is made to a person under~~  
13 ~~twenty one (21) years of age or misdemeanor if the sale or delivery~~  
14 ~~is made to a person twenty one (21) years of age or older. Any~~  
15 ~~person who engages in the sale or shipping of alcoholic beverages in~~  
16 ~~violation of the provisions of this subsection before the effective~~  
17 ~~date of Section 20.1 of Title 21 of the Oklahoma Statutes shall be~~  
18 ~~guilty of a felony punishable by imprisonment for not more than five~~  
19 (5) years, if the sale or delivery is made to a person under twenty-  
20 one (21) years of age, or a misdemeanor, if the sale or delivery is  
21 made to a person twenty-one (21) years of age or older.

22 2. The fine for a violation of this subsection shall be not  
23 more than Five Thousand Dollars (\$5,000.00).

1           3. In addition, if ~~such~~ the person holds a license issued by  
2 the Oklahoma Alcoholic Beverage Laws Enforcement Commission, the  
3 license shall be revoked pursuant to Section 528 of this title.

4           SECTION 4.           NEW LAW           A new section of law to be codified  
5 in the Oklahoma Statutes as Section 520A of Title 37, unless there  
6 is created a duplication in numbering, reads as follows:

7           The Alcoholic Beverage Laws Enforcement Commission is authorized  
8 to issue, upon application of a person who is twenty-one (21) years  
9 of age or older, an annual personal use permit which when granted  
10 authorizes the holder thereof to make, store, possess and transport  
11 for personal use, low-point beer as defined by Section 163.2 of this  
12 title, beer as defined by Section 506 of this title, fermented non-  
13 distilled ciders, and wine as defined by Section 506 of this title.  
14 The total volume of each authorized beverage made and possessed for  
15 personal use in a given calendar year shall be limited to a volume  
16 less than two hundred (200) gallons. The term "personal use" as  
17 used in this section and Sections 163.1 and 505 of Title 37 of the  
18 Oklahoma States means the individual making beverages pursuant to a  
19 valid personal use permit issued by the Alcoholic Beverage Laws  
20 Enforcement Commission produces such beverages solely for his or her  
21 use and consumption, for consumption by his or her family and  
22 guests, and for transport to and use at organized affairs,  
23 exhibitions or competitions, including, but not limited to,

1 homemaker contests, tastings or judgments. No beverage made pursuant  
2 to a personal use permit shall be sold or offered for sale.

3 SECTION 5. AMENDATORY 37 O.S. 2001, Section 554, is  
4 amended to read as follows:

5 Section 554. A. The excise tax levied by Section 553 of this  
6 title shall not apply to:

- 7 1. ~~alcohol~~ Alcohol used exclusively for industrial purposes by  
8 the holder of an industrial license;
- 9 2. ~~alcohol~~ Alcohol lawfully withdrawn and used free of tax  
10 under a tax-free permit issued by the United States government;
- 11 3. ~~alcoholic~~ Alcoholic beverages used exclusively by licensed  
12 physicians and dentists in the bona fide practice of their  
13 professions or by licensed pharmacists in compounding prescriptions;
- 14 4. Beer, cider and wine made for personal use, pursuant to a  
15 personal use permit issued as provided in Section 505 of this title;
- 16 5. ~~wine~~ Wine used exclusively for sacramental purposes in bona  
17 fide religious ceremonies; and
- 18 6. ~~alcoholic~~ Alcoholic beverages, not exceeding one (1) liter,  
19 imported into this state by the possessor for his or her own  
20 personal use.

21 B. As a condition precedent to the allowance of any exemption  
22 authorized by subsection A of this section:

1           1. Where a license or permit is required by the Oklahoma  
2 Alcoholic Beverage Control Act, for such use, the person claiming  
3 any such exemption must have obtained from the Alcoholic Beverage  
4 Laws Enforcement Commission the license or permit authorizing such  
5 exempt use; and

6           2. There must be furnished such proof of the exclusive use for  
7 such exempt purposes as the Oklahoma Tax Commission may require.

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

12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 3-29-10 -  
13 DO PASS, As Amended.