05/24/2012 03:21:10 PM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2653

By: Roberts (Dustin) of the House and Shortey of the Senate

Title: Intoxicating liquors; requiring certain information be included on low-point beer retail dealer permits; requiring display of permit; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

That the Senate recede from its Senate Amendment No. 1 and that the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HB2653 CCR B

HOUSE CONFEREES

Armes _____

Billy _____

Blackwell _____

Brown _____

Cox Douglas L. Cox M.D.

Dank David M. Dank

DeWitt Dale DeWitt

Denney Lee Denney

Dorman _____

Hoskin Charles Hoskin

Liebmann Amy Liebmann

Martin (Scott) Scott C. Martin

McPeak _____

Nelson Gason Nelson

Peters Jon Peters

Sears Earl Sears

Walker Penny D. Walker

House Action _____ Date _____ Senate Action _____ Date _____

HB2653 CCR B

SENATE CONFEREES

Shortey _____

Schulz _____

Jolley _____

Bingman _____

Burrage _____

Ballenger _____

House Action _____ Date _____ Senate Action _____ Date _____

House Action _____ Date _____ Senate Action _____ Date _____

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2653 By: Roberts (Dustin) of the House

and

Shortey of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to intoxicating liquors; requiring certain information be included on low-point beer retail dealer permits; requiring display of permit; amending 37 O.S. 2011, Section 163.7, as amended by Section 1 of Enrolled Senate Bill No. 1667 of the 2nd Session of the 53rd Oklahoma Legislature, which relates to low-point beer; allowing municipalities and counties to require licensees to provide certain information; amending 37 O.S. 2011, Section 524, which relates to nonresident sellers; modifying provision dealing with sales made by nondealers under certain circumstances; requiring notice of scarcity of certain products; providing time limit for orders; prohibiting certain transactions; disposing of surplus; allowing ABLE Commission to waive requirements under certain circumstances; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.7a of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Every retail dealer permit issued by the Oklahoma Tax Commission pursuant to paragraph 3 of Section 163.7 of Title 37 of the Oklahoma Statutes shall have printed on its face whether it is for consumption on premises, consumption off premises or both.

B. Every person who sells low-point beer at retail shall post conspicuously and keep so posted at the place of business the license required pursuant to paragraph 3 of Section 163.7 of Title 37 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 37 O.S. 2011, Section 163.7, as amended by Section 1 of Enrolled Senate Bill No. 1667 of the 2nd Session of the 53rd Oklahoma Legislature, 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 Four Hundred Fifty Dollars ($450.00), which shall cover a three-year period commencing with the effective date of such permit. This permit must be renewed and the license tax paid 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 Four Hundred Dollars ($400.00) for every permit issued or renewed on or after July 1, 2003, but prior to July 1, 2006, of which One Hundred

Dollars ($100.00) shall be deposited in the Community-based Substance Abuse Revolving Fund established in Section 2-311 of Title 43A of the Oklahoma Statutes. The fee for every permit issued or renewed on or after July 1, 2006, shall be Five Hundred Dollars ($500.00), of which Two Hundred Dollars ($200.00) shall be deposited in the Community-based Substance Abuse Revolving Fund,

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 Two Hundred Fifty Dollars ($250.00) for each permit issued or renewed on or after July 1, 2003, but before July 1, 2006, of which One Hundred Dollars ($100.00) shall be deposited in the Community-based Substance Abuse Revolving Fund. The fee for every permit issued on or after July 1, 2006, shall be Three Hundred Fifty Dollars ($350.00), of which Two Hundred Dollars ($200.00) shall be deposited in the Community-based Substance Abuse Revolving Fund,

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 Five Hundred Fifty Dollars ($550.00) for each permit issued or renewed on or after July 1, 2003, but before July 1, 2006, of which One Hundred Dollars ($100.00) shall be deposited in the Community-based Substance Abuse Revolving Fund. The fee for every permit issued on or after July 1, 2006, shall be Six Hundred Fifty Dollars ($650.00), of which Two Hundred Dollars ($200.00) shall be deposited in the Community-based Substance Abuse Revolving Fund. 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 One Hundred Thirty Dollars ($130.00) for each permit issued or renewed on or after July 1, 2003, but prior to July 1, 2006, of which One Hundred Dollars ($100.00) shall be deposited in the Community-based Substance Abuse Revolving Fund. The fee for every permit issued or renewed on or after July 1,

2006, shall be Two Hundred Thirty Dollars ($230.00), of which Two Hundred Dollars ($200.00) shall be deposited in the Community-based Substance Abuse Revolving Fund. 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,

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, and

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

Except as provided in this section, the permit required from the judge of the district court under Section 163.11 of this title and the license fee permissible by municipal corporations pursuant to Section 163.10 of this title, no license or permit or fee related thereto shall be required in relation to the sale, distribution, possession or handling of low-point beer, as defined by Section 163.2 of this title by any agency, instrumentality or political subdivision of this state and no agency, instrumentality or political subdivision of this state shall interfere with the ~~Oklahoma~~ Tax Commission's regulation of, or a wholesaler's performance of, the sale, distribution, possession, handling or marketing of low-point beer on any premises of any retail dealer or permit holder under Section 163.7 of this title. Provided, a municipality or county may require a retail dealer of low-point beer to identify the nature of the business or establishment where the low-point beer is sold or served with sufficient specificity that the law enforcement officers of the municipality or county can determine any age restrictions that pertain to patrons who may enter the premises.

SECTION 3. AMENDATORY 37 O.S. 2011, Section 524, is amended to read as follows:

Section 524. A. A nonresident seller license shall be required of all out-of-state distillers, winemakers, brewers, importers, brokers and others who sell alcoholic beverages to wholesalers and Class B wholesalers in Oklahoma regardless of whether such sales are consummated within or without the State of Oklahoma.

A nonresident seller license shall authorize the holder thereof to solicit and take orders for alcoholic beverages from the holders of licenses authorized to import the same into this state, and to ship or deliver, or cause to be shipped or delivered, alcoholic beverages into Oklahoma pursuant to such sales.

B. The Alcoholic Beverage Laws Enforcement Commission may, subject to the provisions of the Oklahoma Alcoholic Beverage Control Act requiring notice and hearing in the case of sanctions against holders of licenses, suspend or revoke a nonresident seller license for any violation of the Oklahoma Alcoholic Beverage Control Act by the holder thereof.

C. No licensee in this state authorized to import alcoholic beverages into this state shall purchase or receive any alcoholic beverages from without this state from any person not holding a valid and existing nonresident seller license. Every nonresident seller license shall expire on the June 30 following its issuance or renewal, and shall be eligible for subsequent renewal terms of one

(1) year beginning on the July 1 following each expiration. License fees for a new or initial nonresident seller license applied for after July 1 may be prorated through the following June 30 on a quarterly basis.

D. The holder of a nonresident seller license shall, promptly upon consignment of any alcoholic beverages to an importer in Oklahoma, forward to the ABLE Commission a true copy of the invoice, bill of lading, or other document as the ABLE Commission may by regulations prescribe, showing the details of such shipment.

E. Any person, not otherwise a dealer in alcoholic beverages, coming into possession of any alcoholic beverages as security for or in payment of a debt, or as an insurer (or its transferee or assignee) for the salvage or liquidation of an insured casualty or damage or loss, or as an executor, administrator, trustee or other fiduciary may sell the beverages in one ~~lot or parcel to a~~ or more lots or parcels to one or more duly licensed ~~wholesaler~~ wholesalers. However, immediately after taking possession of the alcoholic beverages, the person shall register with the Director and furnish to him a detailed list of the alcoholic beverages and post with the Director a bond in such amount as the Director deems sufficient to protect the state from any taxes due on the alcoholic beverages. The person shall pay to the Director a registration fee of Ten Dollars ($10.00), which fee shall permit the sale of only the alcoholic beverages detailed in the registration request.

Wholesalers may sell the lots or parcels to one or more licensed package stores and/or mixed beverage establishments at whatever price is equitable without regard to current posted prices.

F. Allocation of scarce products:

1. If a product is determined to be in short supply the nonresident seller shall notify the ABLE Commission of the scarcity of the product using procedures promulgated by the ABLE Commission. Wholesalers must submit their order to the nonresident seller within five (5) business days after receiving constructive notice that the ABLE Commission has approved the allocation request;

2. Wholesaler to wholesaler transactions of allocated products are prohibited. If a wholesaler is unable to sell its allocated product, then that inventory must be made available to all remaining wholesalers on a nondiscriminatory basis;

3. If any allocated product remains following the initial allocation, then every wholesaler who purchased a full allocation shall be entitled to submit subsequent orders until that scarce product is no longer available; and

4. The ABLE Commission may waive these allocation requirements for good cause shown or upon a finding by the ABLE Commission that a scarcity no longer exists.

SECTION 4. This act shall become effective November 1, 2012.

53-2-10522 CJB 05/15/12