ENGROSSED SENATE
BILL NO. 1263 By: Barrington of the Senate

and

Nelson of the House

An Act relating to low-point beer; amending 37 O.S. 2011, Sections 163.11 and 163.11a, which relate to retail permits for low-point beer; deleting language for permits issued prior to certain date; allowing an application to be denied for any ground requiring revocation; permitting revocation for material false statement; stating procedure to special event permit; directing permit to issue within certain time period; providing certain exceptions; requiring proof of mailing to chief of police; allowing granting of permit after certain time if no objection is filed; requiring judge to determine permit after certain notice when objection is filed; prohibiting municipality from refusing permit under certain condition; requiring applicant for permit to be certain age; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.11, is amended to read as follows:

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

B. 1. The person applying for a permit must file a verified application every three (3) years ~~and~~ stating that he or she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of this state, or of any other state of the United States, within three (3) years immediately preceding the date of his or her petition, or any of the laws commonly called "Prohibition Laws", or had any permit or license to sell low-point beer revoked in any county of this state within twelve (12) months.

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

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

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

E. Upon petition being filed, the district court clerk shall give fifteen (15) days' notice for an initial application, and it is

the applicant's responsibility to cause the same to be posted by the entrance on the front of the building in which said low-point beer is to be sold and to file proof of posting in such case; and a copy of said notice shall also be mailed to the district attorney, the sheriff and the chief of police or marshal of any city or town in which said business is to be operated. Said notice shall contain the name of the applicant and the location of said place of business. The initial permit shall be valid for a period of three (3) years and shall expire if not renewed with proper showing required by subsection B of this section, and upon payment of proper fees. A permit may be renewed within ten (10) days of expiration, upon proper application pursuant to subsection B of this section and payment of the proper fees, but without the payment of any late fees. Provided, however, that if a proper application under subsection B of this section is filed within eleven (11) days but not more than thirty (30) days after the expiration date of the permit, upon payment of a fee of One Hundred Dollars ($100.00) in addition to the initial permit fee, the court clerk is authorized to treat said application as one for renewal and to issue a renewal permit to the applicant, if all requirements have otherwise been met by the applicant. A renewal permit granted during the thirty-day grace period shall become effective upon the date of its issuance by the court clerk.

F. ~~A permit issued prior to September 1, 1994, shall be valid until it expires and shall be renewed for a period of three (3) years or until expiration of the sales tax permit issued by the Oklahoma Tax Commission, if any, held by the person at the time of such renewal, whichever is earlier. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the court clerk~~ An application shall be denied upon any ground that would require the permit to be revoked.

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

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

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

J. All testimony before the district court shall be under oath.

K. A judge of the district court, upon five (5) days' notice to the person holding such permit, shall revoke such permit for any one of the following reasons:

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

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

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

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

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

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

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

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

9. A material false statement in the application.

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

premises prior to the expiration of a period of three (3) years from the date of such revocation.

M. On or before the tenth day of each month each district court clerk shall file with the Oklahoma Tax Commission, on forms prescribed and furnished by the Commission, a report showing the name, address, and county permit number of each such person to whom a county permit has been issued or whose permit has been revoked, or who shall have been refused a county permit, during the previous calendar month. In case of the revocation of a permit by a judge of the district court, the district court clerk shall within five (5) days report such action to the Oklahoma Tax Commission. If county permits shall have been issued, revoked or refused during the month, the district court clerk shall make a report accordingly to the Commission.

N. 1. Upon application to and approval by the court clerk of the district court, an applicant to be a retail dealer as defined by Section 163.2 of this title who meets the requirements of this section and Section 163.11a of this title may be granted a special event permit ~~without the requirement of notice or posting,~~ after payment of a fee of Twenty-five Dollars ($25.00) in addition to other fees required by law, which fees shall not be refundable or apportionable. A special event permit for the sale and on-premises consumption of low-point beer shall be issued fourteen (14) days

after the date of filing with the district court of the application, unless a protest is filed as provided in this subsection.

2. Every application for a special event permit shall contain proof that a copy of the application has been mailed to the chief of police or marshal of the city or town, and the sheriff and district attorney of the county, wherein the special event is to be located.

a. If no objection is filed within ten (10) days after service of notice of the application, the court clerk may grant the special event permit.

b. If a written objection or request for restrictions is filed within ten (10) days after service of the application, a judge of the district court, upon five (5) days' notice to the applicant, chief of police or marshal of the city or town, and sheriff and district attorney of the county, where the event is to occur, shall determine whether the special permit should be granted, restricted or denied, based upon the totality of circumstances concerning the proposed event, including, but not limited to, the location of the event, qualifications of the applicant, history of the applicant, and specific concerns regarding public safety.

3. A special event permit issued under this subsection shall authorize the holder thereof to sell and distribute low-point beer

for a period not to exceed ten (10) consecutive days from the date of issuance. A separate permit shall be required for each individual place of business, whether permanent or a temporary assemblage. Provided, retail dealers shall not be required to obtain a special permit for each bar or service unit within the same enclosed area or within the general vicinity of each other for events held outside a physical structure. A special event permit shall not be renewable. A municipality shall not, by ordinance or otherwise, refuse to issue a special event permit or special event license ~~on the basis that the applicant already possesses a permit or license in the applicant's same name~~ for any event for which the applicant has received a special event permit as provided in this section.

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

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

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

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

SECTION 2. AMENDATORY 37 O.S. 2011, Section 163.11a, is amended to read as follows:

Section 163.11a. A. Every person applying to a district court clerk of this state for a permit to sell low-point beer at retail, as provided for in Section 163.11 of this title, shall by affidavit at the time of applying for said permit and by such further proof as the district court clerk may require, make the following proof:

1. Noncorporate Persons. That each applicant for a permit or other individual who has a beneficial interest in the business for which permit is sought <u>is at least twenty-one (21) years of age</u>, has for at least one (1) year next preceding the filing of the application maintained a bona fide residence in the State of

Oklahoma, and is at the time of making said application maintaining and actually residing in a residence in the county or adjoining county in which said application is made; and

2. Corporate Persons. That such corporations are duly authorized to transact business in the State of Oklahoma, and that ~~the~~ each agent or ~~employees~~ employee managing or in charge of the place of business for which the permit is sought is at least twenty-one (21) years of age, is maintaining and residing in a residence located in said county, or adjoining county, and that such corporation consents that any and all notices required to be served under the provisions of Section 163.1 et seq. of this title may be served on such resident agent or employee.

B. Renewal permits may be granted to corporations which have undergone a name change after the initial permit was granted, provided that the new corporation's affidavit and application demonstrate that the corporation has retained the same officers, and that it is otherwise the same corporation which received the initial permit, in addition to payment of proper fees. The initial permits issued to noncorporate persons which have changed legal identities or entities may be renewed upon proper application demonstrating that the identity of the renewal permit holder is the same as that sought to be renewed, and that the business address is the same, in addition to payment of proper fees.

SECTION 3. This act shall become effective July 1, 2012.

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

Passed the Senate the 7th day of March, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House of Representatives