

1 **CORRECTED PRINTING**

2 **SENATE FLOOR VERSION**

3 February 28, 2012

4 As Amended

5 SENATE BILL NO. 1263

6 By: Barrington of the Senate

7 and

8 Nelson of the House

9 An Act relating to low-point beer; amending 37 O.S.
10 2011, Sections 163.11 and 163.11a, which relate to
11 retail permits for low-point beer; deleting language
12 for permits issued prior to certain date; allowing an
13 application to be denied for any ground requiring
14 revocation; permitting revocation for material false
15 statement; stating procedure to special event permit;
16 directing permit to issue within certain time period;
17 providing certain exceptions; requiring proof of
18 mailing to chief of police; allowing granting of
19 permit after certain time if no objection is filed;
20 requiring judge to determine permit after certain
21 notice when objection is filed; prohibiting
22 municipality from refusing permit under certain
23 condition; requiring applicant for permit to be
24 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

1 first securing a permit issued by the district court clerk of the
2 county in which the premises are located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 9. A material false statement in the application.

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

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

15 N. 1. Upon application to and approval by the court clerk of
16 the district court, an applicant to be a retail dealer as defined by
17 Section 163.2 of this title who meets the requirements of this
18 section and Section 163.11a of this title may be granted a special
19 event permit ~~without the requirement of notice or posting,~~ after
20 payment of a fee of Twenty-five Dollars (\$25.00) in addition to
21 other fees required by law, which fees shall not be refundable or
22 apportionable. A special event permit for the sale and on-premises
23 consumption of low-point beer shall be issued fourteen (14) days
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1 after the date of filing with the district court of the application,
2 unless a protest is filed as provided in this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & COMMERCE, dated 2-23-12
6 - DO PASS, As Amended and Coauthored.

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