

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2867

By: Shelton

4
5
6 AS INTRODUCED

7 An Act relating to intoxicating liquors; amending 37
8 O.S. 2011, Section 163.11, which relates to low-point
9 beer; modifying certain permit eligibility
10 requirement; amending 37 O.S. 2011, Section 528,
11 which relates to alcoholic beverages; modifying
12 certain license eligibility requirements; and
13 providing an effective date.

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

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

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

22 B. 1. The person applying for a permit must file a verified
23 application every three (3) years and that he or she has never been
24 convicted of violating any of the laws prohibiting the traffic in

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

7 2. A person who has been convicted of a felony shall not be
8 eligible for a permit unless the person received a pardon for the
9 felony or a period of ~~ten (10)~~ three (3) years has elapsed since the
10 completion of the sentence imposed for the felony.

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

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

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

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

21 F. A permit issued prior to September 1, 1994, shall be valid
22 until it expires and shall be renewed for a period of three (3)
23 years or until expiration of the sales tax permit issued by the
24 Oklahoma Tax Commission, if any, held by the person at the time of

1 such renewal, whichever is earlier. The manner and prorated fee for
2 renewals of less than three (3) years shall be prescribed by the
3 court clerk.

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

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

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

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

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

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

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

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

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

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

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

22 7. Conviction for the violation of any of the laws of this
23 state or the United States for the sale or possession of
24

1 intoxicating liquors within three (3) years immediately preceding
2 the issuance of such dealer's license; or

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

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

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

1 the district court, the district court clerk shall within five (5)
2 days report such action to the Oklahoma Tax Commission. If county
3 permits shall have been issued, revoked or refused during the month,
4 the district court clerk shall make a report accordingly to the
5 Commission.

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

24

1 applicant already possesses a permit or license in the applicant's
2 same name.

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

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

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

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

1 SECTION 2. AMENDATORY 37 O.S. 2011, Section 528, is
2 amended to read as follows:

3 Section 528. A. Any license issued pursuant to the provisions
4 of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq.
5 of this title, by order of the Alcoholic Beverage Laws Enforcement
6 Commission, after due notice and hearing, may be revoked or
7 suspended if the ABLE Commission finds or has grounds to believe
8 that the licensee has:

9 1. Violated any rule adopted by the ABLE Commission;

10 2. Procured a license through fraud, or misrepresentation, or
11 concealment of a material fact;

12 3. Made any false representation or statement to the ABLE
13 Commission in order to prevent or induce action by the ABLE
14 Commission;

15 4. Maintained an unsanitary establishment or has supplied
16 impure or otherwise deleterious beverages or food;

17 5. Stored, possessed, mixed or served on the premises of a
18 bottle club any alcoholic beverage upon which the tax levied by
19 Section 553 of this title has not been paid as provided for in the
20 Oklahoma Alcoholic Beverage Control Act, in a county of this state
21 where the sale of alcoholic beverages by the individual drink for
22 on-premises consumption has not been authorized;

23 6. Misrepresented to a customer or the public any alcoholic
24 beverage sold by the licensee; or

1 7. Had any permit or license issued by the Oklahoma Tax
2 Commission and required by the Oklahoma Alcoholic Beverage Control
3 Act, suspended or revoked by the Tax Commission.

4 B. The ABLE Commission may revoke or suspend the license of any
5 mixed beverage, caterer or bottle club licensee if the ABLE
6 Commission finds or has grounds to believe that such licensee:

7 1. Has acted as an agent of a manufacturer or wholesaler of
8 alcoholic beverages;

9 2. Is a manufacturer or wholesaler of alcoholic beverages;

10 3. Has borrowed money or property or accepted gratuities or
11 rebates from a manufacturer or wholesaler of alcoholic beverages;

12 4. Has obtained the use of equipment from any manufacturer or
13 wholesaler of alcoholic beverages or any agent thereof;

14 5. Has violated any of the provisions of the Oklahoma Alcoholic
15 Beverage Control Act for which mandatory revocation or suspension is
16 not required; or

17 6. Has been convicted on or after July 1, 1985, of a violation
18 of any state or federal law relating to alcoholic beverage for which
19 mandatory revocation or suspension is not required.

20 C. The ABLE Commission may revoke or suspend the license of any
21 retail, mixed beverage, caterer, or bottle club licensee if the ABLE
22 Commission finds or has grounds to believe that such licensee has
23 borrowed money or property or accepted gratuities, discounts,
24

1 rebates, free goods, allowances, or other inducements from a
2 wholesaler of alcoholic beverages.

3 D. The ABLE Commission shall revoke the license of any licensee
4 if said Commission finds:

5 1. That the licensee knowingly sold alcoholic beverages or
6 allowed such beverages to be sold, delivered or furnished to any
7 person under the age of twenty-one (21) years, or to any person
8 visibly intoxicated or adjudged insane or mentally deficient;

9 2. That the licensee, any general or limited partner of the
10 licensee, or in the case of a corporation, an officer or director of
11 the corporation, has been convicted of a felony; provided, however,
12 an employee license issued pursuant to subsection P of Section 521
13 of this title shall not be revoked if three (3) years have elapsed
14 since the completion of the sentence imposed for the felony;

15 3. That, in the case of a wholesaler, Class B wholesaler, or
16 retail package store licensee, the holder of the license or any
17 member of a general or limited partnership which is the holder of
18 such a license, has been convicted of a prohibitory law relating to
19 the sale, manufacture, or transportation of alcoholic beverages
20 which constitutes a felony or a misdemeanor.

21 E. If the ABLE Commission shall find by a preponderance of the
22 evidence as in civil cases that the holder of a package store
23 license has knowingly sold any alcoholic beverage to any person
24 under the age of twenty-one (21) years, after a public hearing it

1 shall revoke said license and no discretion as to said revocation
2 shall be exercised by the ABLE Commission.

3 F. The ABLE Commission shall have the authority to promulgate
4 rules and regulations to establish a penalty schedule for violations
5 of any provision of the Oklahoma Alcoholic Beverage Control Act or
6 any rule or regulation of the ABLE Commission. The schedule shall
7 provide for suspension or revocation of any license for major and
8 minor violations as determined by the ABLE Commission. Penalties
9 shall be increasingly severe with each violation by a licensee.

10 Provided, that for a fourth major violation by a licensee within
11 a twenty-four-month period the penalty shall be mandatory revocation
12 of license. The twenty-four-month period shall be calculated from
13 the date of the most recent violation as set forth in an order
14 signed by the Director or the designee of the Director.

15 G. The ABLE Commission may impose a monetary penalty in lieu of
16 or in addition to suspension of a license. The amount of fine for a
17 major violation shall be computed by multiplying the proposed number
18 of days of the suspension period by One Hundred Dollars (\$100.00).
19 The amount of fine for a minor violation shall be computed by
20 multiplying the number of days of the proposed suspension period by
21 Fifty Dollars (\$50.00).

22 H. The failure of any licensee to pay a fine or serve a
23 suspension imposed by the ABLE Commission shall result in the
24 revocation of the license of said licensee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I. If the ABLE Commission finds that public health, safety or welfare require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceeding for revocation or other action, pursuant to the provisions of Section 314 of Title 75 of the Oklahoma Statutes.

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

53-2-8134 CJB 01/16/12