HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

ENGROSSED SENATE
BILL NO. 486 By: Bice of the Senate

and

Mulready of the House

An Act relating to alcoholic beverages; merging, re-enacting and repealing duplicate sections; repealing 37 O.S. 2011, Section 163.5, as amended by Section 1, Chapter 261, O.S.L. 2016 (37 O.S. Supp. 2016, Section 163.5), which is a duplicate section and which relates to excise taxes on low-point beer; repealing 37 O.S. 2011, Section 537.1, as last amended by Section 1, Chapter 136, O.S.L. 2016 and 37 O.S. 2011, Section 537.1, as last amended by Section 8, Chapter 275, O.S.L. 2016 (37 O.S. Supp. 2016, Section 537.1), which are duplicate sections and which relate to prohibited acts; amending Section 149, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 6-109), which relates to prohibited acts; repealing 37 O.S. 2011, Section 553, as last amended by Section 2, Chapter 261, O.S.L. 2016 (37 O.S. Supp. 2016, Section 553), which is a duplicate section and which relates to excise taxes on alcoholic beverages; amending Section 104, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 5-101), which relates to excise taxes on alcoholic beverages; repealing Sections 1, 5, 10 and 15 of act on future effective date; providing for codification; providing effective dates; and declaring an emergency.

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 163.5A of Title 37, unless there is created a duplication in numbering, reads as follows:

A. The excise tax levied by Section 163.3 of Title 37 of the Oklahoma Statutes on low-point beer shall be due and payable on or before the twentieth day of each month for the preceding calendar month and such tax shall be remitted electronically at the time the return is electronically filed as prescribed by subsection B of this section.

B. At the time of paying the tax as required by subsection A of this section each taxpayer shall file electronically with the Tax Commission a return, under oath, using procedures prescribed by the Tax Commission, showing the total sales of such beverages during the preceding calendar month, the amount of taxes due, and such further information as the Tax Commission may require to enable it to compute correctly and collect the taxes levied under Section 163.1 et seq. of this title.

C. Any tax not paid within ten (10) days after the close of the preceding calendar month shall be delinquent.

SECTION 2. REPEALER 37 O.S. 2011, Section 163.5, as amended by Section 1, Chapter 261, O.S.L. 2016 (37 O.S. Supp. 2016, Section 163.5), is hereby repealed.

SECTION 3. REPEALER Section 1 of this act, is hereby repealed.

SECTION 4. Section 3 of this act shall become effective October 1, 2018.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 537.1A of Title 37, unless there is created a duplication in numbering, reads as follows:

No mixed beverage, beer and wine, bottle club, caterer, charitable event, public event or special event licensee or any employee, manager, operator or agent thereof shall:

1. Consume or be under the influence of alcoholic beverages during the hours he or she is on duty. For the purposes of this section, licensees will be deemed to be on duty from the time the licensee first comes on duty until the time the licensee goes off duty at the end of the shift, including any break periods permitted by management. This paragraph shall not apply to any person who works on the premises as an entertainer only;

2. Permit or tolerate any conduct or language which is intended to threaten another with physical harm or any fighting or offensive physical contact, in or upon the licensed premises or areas just outside the licensed premises which are controlled by the licensee;

3. Permit empty or discarded alcoholic beverage containers to be in public view outside the licensed premises. All empty or discarded containers shall be disposed of in accordance with ABLE Commission rules and regulations;

4. Permit any illegal gambling activity, violations of the state narcotic and dangerous drug laws, or prostitution activity or any other criminal conduct to occur on the licensed premises;

5. Refuse or fail to promptly open a door to the licensed premises upon request of an agent or inspector of the Alcoholic Beverage Laws Enforcement Commission or any other peace officer to enter the premises, when the licensee or employee knows or should know that such request is made by an agent or inspector of the ABLE Commission or any other peace officer. This provision shall not be construed to deny agents of the ABLE Commission or any other peace officer access at any time to any licensed premises;

6. Permit a sealed or unsealed container of alcoholic beverage to be removed from the licensed premises. Provided that restaurants, hotels, and motels may permit the removal of closed original wine containers the contents of which have been partially consumed and bottle clubs may permit the removal by a club member of closed original containers of alcoholic beverages belonging to the members. The provisions of this paragraph shall not be construed to prohibit or restrict:

a. hotels or motels who are holders of mixed beverage or beer and wine licenses from allowing alcoholic beverages to be served away from the bar area anywhere on the licensed premises,

b. licensees, who are lawfully operating in a facility or on property owned or operated by any agency, political subdivision or public trust of this state, from allowing persons to transport alcoholic beverages from one licensed premises to another within the same building or property, provided that the building or property or a part thereof is defined as a common drinking area for consumption of alcohol by resolution of the governing body of the agency, political subdivision or public trust of this state, or

c. licensees, who are licensed to operate in a facility or on property owned or operated by any agency, political subdivision or public trust of this state, from allowing other licensees to operate on their licensed premises for events that are temporary in nature. In the event that multiple licensees are operating in a facility or on property owned or operated by any agency, political subdivision or public trust of this state, each licensee shall be responsible for violations occurring in their area designated to be their temporary licensed premises; or

7. Destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or refuse to surrender evidence when

lawfully requested to do so by an inspector, agent or any other peace officer or incite another person to do any of the above.

SECTION 6. REPEALER 37 O.S. 2011, Section 537.1, as last amended by Section 1, Chapter 136, O.S.L. 2016 and 37 O.S. 2011, Section 537.1, as last amended by Section 8, Chapter 275, O.S.L. 2016 (37 O.S. Supp. 2016, Section 537.1), are hereby repealed.

SECTION 7. REPEALER Section 5 of this act, is hereby repealed.

SECTION 8. AMENDATORY Section 149, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 6-109), is amended to read as follows:

Section 6-109. No mixed beverage, beer and wine, bottle club, caterer, charitable event, public event or special event licensee or any employee, manager, operator or agent thereof shall:

1. Consume or be under the influence of alcoholic beverages during the hours he or she is on duty. For the purposes of this section, licensees will be deemed to be on duty from the time the licensee first comes on duty until the time the licensee goes off duty at the end of the shift, including any break periods permitted by management. This paragraph shall not apply to any person who works on the premises as an entertainer only;

2. Permit or tolerate any conduct or language which is intended to threaten another with physical harm or any fighting or offensive

physical contact, in or upon the licensed premises or areas just outside the licensed premises which are controlled by the licensee;

3. Permit empty or discarded alcoholic beverage containers to be in public view outside the licensed premises. All empty or discarded containers shall be disposed of in accordance with ABLE Commission rules and regulations;

4. Permit any illegal gambling activity, violations of the state narcotic and dangerous drug laws, prostitution activity or any other criminal conduct to occur on the licensed premises;

5. Refuse or fail to promptly open a door to the licensed premises upon request of an employee of the ABLE Commission or any other peace officer to enter the premises when the licensee or employee knows or should know that such request is made by an employee of the ABLE Commission or a peace officer. This provision shall not be construed to deny employees of the ABLE Commission or peace officers access at any time to any licensed premises;

6. Permit a sealed or unsealed container of alcoholic beverage to be removed from the licensed premises. Provided, that restaurants, hotels and motels may permit the removal of closed original wine containers the contents of which have been partially consumed and bottle clubs may permit the removal by a club member of closed original containers of alcoholic beverages belonging to members. The provisions of this paragraph shall not be construed to prohibit or restrict:

a. hotels or motels who are holders of mixed beverage or on-premises beer and wine licenses from allowing alcoholic beverages to be served away from the bar area anywhere on the licensed premises, ~~or~~

b. licensees, who are lawfully operating ~~at an event held~~ in a facility <u>or on property</u> owned or operated by any agency, political subdivision or public trust of this state, from allowing persons to transport alcoholic beverages from one licensed premises to another within the same building <u>or property</u>, provided that the building <u>or property</u> or a part thereof is defined as a common drinking area for consumption of alcohol by resolution of the governing body of the agency, political subdivision or public trust of this state<u>, or</u>

<u>c. licensees, who are licensed to operate in a facility or on property owned or operated by any agency, political subdivision or public trust of this state, from allowing other licensees to operate on their licensed premises for events that are temporary in nature. In the event that multiple licensees are operating in a facility or on property owned or operated by any agency, political subdivision or public trust of this state, each licensee shall be</u>

responsible for violations occurring in their area designated to be their temporary licensed premises; or

7. Destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or refuse to surrender evidence when lawfully requested to do so by an inspector, agent or any other peace officer or incite another person to do any of the above.

SECTION 9. Sections 7 and 8 of this act shall become effective October 1, 2018.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 553A of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in paragraph 5 of this subsection, an excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or distribution, or used or possessed in this state at the following rates:

1. One Dollar and forty-seven cents ($1.47) per liter, and a proportionate rate on fractions thereof, on each liter of spirits;

2. Nineteen cents ($0.19) per liter, and a proportionate rate on fractions thereof, on each liter of wine;

3. Fifty-five cents ($0.55) per liter, and a proportionate rate on fractions thereof, on each liter of sparkling wine;

4. Twelve Dollars and fifty cents ($12.50) per barrel (thirty-one (31) wine gallons) and a proportionate rate on portions thereof, on each barrel of beer; and

5. Beer manufactured in this state for export shall not be taxed.

B. The excise tax levied on alcoholic beverages except beer under subsection A of this section shall be paid as follows:

1. Payment of the excise tax levied by this section with respect to all alcoholic beverages, other than beer, shall be made by the person shipping the same into Oklahoma, or in the case of direct imports from foreign countries by the importer, or in the case of alcoholic beverages manufactured in Oklahoma by the first seller thereof; and

2. On and after July 1, 2016, the due and payable excise tax levied by this section shall be remitted electronically simultaneously with tax returns electronically filed with the Oklahoma Tax Commission using procedures prescribed by the Tax Commission. The tax returns shall be made under oath by the person liable for the tax on forms prescribed and provided by the Oklahoma Tax Commission and shall be accompanied by payment of the taxes due and any additional sums due as provided by this section. Invoices describing all alcoholic beverages as described in this section which are shipped into this state or which are first sold in this state shall be delivered to the Oklahoma Tax Commission and to the Alcoholic Beverage Laws Enforcement Commission immediately following shipment of liquors into the state or delivery to the first purchaser. Tax returns and payment of excise tax and other sums due

shall be electronically filed with the Oklahoma Tax Commission no later than the twentieth day of the month immediately succeeding the month of shipment, importation or first sale of the alcoholic beverages as provided in paragraph 1 of this subsection.

C. For the purpose of collecting and remitting the excise tax imposed under this section, the person liable for such tax is hereby declared to be the agent of the state for such purposes.

D. Nothing herein shall be construed to impose an additional excise tax on intoxicating beverages held in inventory by wholesalers and retailers upon which the excise tax was paid prior to the effective date of any excise tax increase.

SECTION 11. REPEALER 37 O.S. 2011, Section 553, as last amended by Section 2, Chapter 261, O.S.L. 2016 (37 O.S. Supp. 2016, Section 553), is hereby repealed.

SECTION 12. REPEALER Section 10 of this act, is hereby repealed.

SECTION 13. AMENDATORY Section 104, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 5-101), is amended to read as follows:

Section 5-101. A. Except as provided in this subsection, an excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or distribution, or used or possessed in this state at the following rates:

1. One Dollar and forty-seven cents ($1.47) per liter, and a proportionate rate on fractions thereof, on each liter of spirits;

2. Nineteen cents ($0.19) per liter, and a proportionate rate on fractions thereof, on each liter of wine;

3. Fifty-five cents ($0.55) per liter, and a proportionate rate on fractions thereof, on each liter of sparkling wine; and

4. Twelve Dollars and fifty cents ($12.50) per barrel (thirty-one (31) wine gallons) and a proportionate rate on portions thereof, on each barrel of beer; provided, beer manufactured in this state for export shall not be taxed.

B. The excise tax levied on alcoholic beverages except beer under subsection A of this section shall be paid as follows:

1. Payment of the excise tax levied by this section with respect to all alcoholic beverages, other than beer, shall be made by the person shipping the same into Oklahoma, or in the case of direct imports from foreign countries by the importer, or in the case of alcoholic beverages manufactured in Oklahoma by the first seller thereof; and

2. The due and payable excise tax levied by this section shall be remitted electronically simultaneously with tax returns electronically filed with the Oklahoma Tax Commission using procedures prescribed by the Tax Commission. The tax returns shall be made under oath by the person liable for the tax on forms prescribed and provided by the Tax Commission and shall be

accompanied by payment of the taxes due and any additional sums due as provided by this section. Invoices describing all alcoholic beverages as described in this section which are shipped into this state or which are first sold in this state shall be delivered to the Tax Commission immediately following shipment of liquors into the state or delivery to the first purchaser. Tax returns and payment of excise tax and other sums due shall be electronically filed with the Tax Commission no later than the twentieth day of the month immediately succeeding the month of shipment, importation or first sale of the alcoholic beverages as provided in paragraph 1 of this subsection~~; and~~

~~3. Each person required to file a tax return pursuant to this section shall remit the excise tax due. Up to ten percent (10%) of each tax payment made under this subsection may be made in the form of revenue stamps previously purchased pursuant to Section 111 of this act~~.

C. For the purpose of collecting and remitting the excise tax imposed under this section, the person liable for such tax is hereby declared to be the agent of the state for such purposes.

D. Nothing herein shall be construed to impose an additional excise tax on alcoholic beverages held in inventory by wholesalers and retailers upon which the excise tax was paid prior to the effective date of any excise tax increase.

E. The retail sale of alcoholic beverages shall be subject to the sales tax statutes enacted by the Legislature.

SECTION 14. Sections 12 and 13 of this act shall become effective October 1, 2018.

SECTION 15. It being immediately necessary for the preservation of the public peace, health or 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.

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM, dated 04/12/2017 - DO PASS.