An Act

ENROLLED HOUSE
BILL NO. 2348

By: Schwartz, Williams and Dorman of the House

and

Schulz of the Senate

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Sections 163.1, 163.3, as amended by Section 1, Chapter 484, O.S.L. 2003, 505 and 554 (37 O.S. Supp. 2009, Section 163.3), which relate to manufacturing beer; authorizing the making of low-point beer for personal use; limiting quantity of low-point beer made annually for personal use; prohibiting sale of certain low-point beer; exempting certain low-point beer from certain excise tax; making language gender neutral; clarifying language; requiring a personal use permit for production of certain beverages; deleting obsolete penalty provisions; authorizing the Alcoholic Beverage Laws Enforcement Commission to issue personal use permits for certain purpose; setting minimum age for application for certain permit; setting volume limitation for certain beverages; defining term; prohibiting sale of certain beverages; adding beer to certain tax exemption; and providing for codification.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 163.1, is amended to read as follows:

Section 163.1 All beverages containing more than three and two-tenths percent (3.2%) alcohol by weight and all mixed beverage coolers, as defined in Section 506 of this title, regardless of percent of alcoholic content, are hereby declared to be

intoxicating. All beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight are hereby declared to be low-point beer. Wherever the term "nonintoxicating beverage" or "nonintoxicating malt beverage" appears in the Oklahoma Statutes, such term shall be construed to mean low-point beer. The manufacture, distribution and sale of low-point beer, including but not limited to beer or cereal malt beverages, are hereby declared subject to the provisions of Section 163.1 et seq. of this title. Provided, that nothing herein shall prevent a person from making low-point beer, as defined by Section 163.2 of this title, by simple fermentation for personal use if the maker of such beverages has first applied for and possesses a valid personal use permit issued by the Alcoholic Beverage Laws Enforcement Commission, as provided in Section 4 of this act, and the total volume of low-point beer produced in any given calendar year is less than two hundred (200) gallons. No beverage made pursuant to a personal use permit shall be sold or offered for sale.

SECTION 2. AMENDATORY 37 O.S. 2001, Section 163.3, as amended by Section 1, Chapter 484, O.S.L. 2003 (37 O.S. Supp. 2009, Section 163.3), is amended to read as follows:

Section 163.3 There is hereby levied on all low-point beer containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume and not more than three and two-tenths percent (3.2%) of alcohol measured by weight which are manufactured and sold, or removed for consumption or sale, within this state a tax of Eleven Dollars and twenty-five cents ($11.25) for every barrel containing not more than thirty-one (31) gallons, and at a like rate of tax for any other quantities or for a fractional part of a barrel. Provided, any low-point beer manufactured in this state for export or produced pursuant to a valid personal use permit issued by the Alcoholic Beverage Laws Enforcement Commission pursuant to Section 4 of this act shall not be taxed ~~under~~ as provided in this section.

Each wholesaler making reports and remittances to the Oklahoma Tax Commission shall be allowed the sum of one percent (1%) of the tax remittances collected for maintaining and collecting ~~said~~ the tax for the benefit of this state.

Machinery and equipment directly used in the manufacture within this state of low-point beer taxed pursuant to the provisions of

this section shall be exempt from taxation under any other law of this state levying a sales or consumers or use tax.

SECTION 3. AMENDATORY 37 O.S. 2001, Section 505, is amended to read as follows:

Section 505. A. No person shall manufacture, rectify, sell, possess, store, import into or export from this state, transport, or deliver any alcoholic beverage except as specifically provided in the Oklahoma Alcoholic Beverage Control Act. Provided, that nothing herein shall prevent the possession and transportation of alcoholic beverages for the personal use of the possessor~~,~~ and his or her family and guests, so long as the Oklahoma excise tax has been paid thereon, except for beer. Provided, further, that nothing herein shall prevent ~~the~~ a person from making ~~of~~ beer, as defined by Section 506 of this title, cider, or ~~of~~ wine~~, not to exceed two hundred (200) gallons in any one (1) year pursuant to a license first obtained from the Alcoholic Beverage Laws Enforcement Commission~~, as defined by Section 506 of this title, by simple fermentation and without distillation~~,~~ for personal use if ~~made solely for the use of~~ the maker~~, his family and guests~~ of such beverages has first applied for and possesses a valid personal use permit issued by the Alcoholic Beverage Laws Enforcement Commission as provided in Section 4 of this act and the total volume of beer, cider or wine produced in any given calendar year is less than two hundred (200) gallons. No beverages made pursuant to a personal use permit shall be sold or offered for sale.

B. 1. Any duly licensed physician or dentist may possess and use alcoholic beverages in the strict practice of ~~his~~ the profession and any hospital or other institution caring for sick ~~and~~ or diseased persons may possess and use alcoholic beverages for the treatment of bona fide patients of such hospital or institution. Any drugstore employing a licensed pharmacist may possess and use alcoholic beverages in the preparation of prescriptions of duly licensed physicians.

2. The possession, transportation and dispensation of wine by any authorized representative of any church for the conducting of a bona fide rite or religious ceremony conducted by such church shall not be prohibited by the Oklahoma Alcoholic Beverage Control Act; nor shall ~~said~~ such act prevent the sale, shipping or delivery of sacramental wine by any person holding a sacramental wine supplier license issued pursuant to the Oklahoma Alcoholic Beverage Control Act to any religious corporation or society of this state holding a

valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1954, and listed as an exempt organization in Section 501(c)(3) of the Internal Revenue Code, 1954, of the United States, as amended.

3. Provided further, that nothing in the Oklahoma Alcoholic Beverage Control Act shall prevent the possession, transportation and sale of alcoholic beverages, including beer as defined by Section 506 of this title and beer containing not more than three and two-tenths percent (3.2%) of alcohol by weight, within military reservations and in accordance with the laws, rules and regulations governing such military reservations, provided that the Oklahoma excise tax has been paid on spirits and wines.

C. 1. Except as otherwise authorized by law, it is unlawful for any manufacturer, wholesaler or retailer of alcoholic beverages, located and doing business from outside this state, to make retail sales of alcoholic beverages to purchasers located in this state or to ship alcoholic beverages sold at retail to persons located in this state. Any person who engages in the sale or shipping of alcoholic beverages in violation of the provisions of this subsection ~~on or after the effective date of Section 20.1 of Title 21 of the Oklahoma Statutes~~, upon conviction, shall be guilty of a ~~Schedule G felony if the sale or delivery is made to a person under twenty one (21) years of age or misdemeanor if the sale or delivery is made to a person twenty one (21) years of age or older. Any person who engages in the sale or shipping of alcoholic beverages in violation of the provisions of this subsection before the effective date of Section 20.1 of Title 21 of the Oklahoma Statutes shall be guilty of a~~ felony punishable by imprisonment for not more than five (5) years, if the sale or delivery is made to a person under twenty-one (21) years of age, or a misdemeanor, if the sale or delivery is made to a person twenty-one (21) years of age or older.

2. The fine for a violation of this subsection shall be not more than Five Thousand Dollars ($5,000.00).

3. In addition, if ~~such~~ the person holds a license issued by the Oklahoma Alcoholic Beverage Laws Enforcement Commission, the license shall be revoked pursuant to Section 528 of this title.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 520A of Title 37, unless there is created a duplication in numbering, reads as follows:

The Alcoholic Beverage Laws Enforcement Commission is authorized to issue, upon application of a person who is twenty-one (21) years of age or older, an annual personal use permit which when granted authorizes the holder thereof to make, store, possess and transport for personal use, low-point beer as defined by Section 163.2 of this title, beer as defined by Section 506 of this title, fermented non-distilled ciders, and wine as defined by Section 506 of this title. The total volume of each authorized beverage made and possessed for personal use in a given calendar year shall be limited to a volume less than two hundred (200) gallons. The term "personal use" as used in this section and Sections 163.1 and 505 of Title 37 of the Oklahoma Statutes means the individual making beverages pursuant to a valid personal use permit issued by the Alcoholic Beverage Laws Enforcement Commission produces such beverages solely for his or her use and consumption, for consumption by his or her family and guests, and for transport to and use at organized affairs, exhibitions or competitions, including, but not limited to, homemaker contests, tastings or judgings. No beverage made pursuant to a personal use permit shall be sold or offered for sale.

SECTION 5. AMENDATORY 37 O.S. 2001, Section 554, is amended to read as follows:

Section 554. A. The excise tax levied by Section 553 of this title shall not apply to:

1. ~~alcohol~~ Alcohol used exclusively for industrial purposes by the holder of an industrial license;

2. ~~alcohol~~ Alcohol lawfully withdrawn and used free of tax under a tax-free permit issued by the United States government;

3. ~~alcoholic~~ Alcoholic beverages used exclusively by licensed physicians and dentists in the bona fide practice of their professions or by licensed pharmacists in compounding prescriptions;

4. Beer, cider and wine made for personal use~~,~~ pursuant to a personal use permit issued as provided in Section 505 of this title;

5. ~~wine~~ Wine used exclusively for sacramental purposes in bona fide religious ceremonies; and

6. ~~alcoholic~~ Alcoholic beverages, not exceeding one (1) liter, imported into this state by the possessor for his or her own personal use.

B. As a condition precedent to the allowance of any exemption authorized by subsection A of this section:

1. Where a license or permit is required by the Oklahoma Alcoholic Beverage Control Act, for such use, the person claiming any such exemption must have obtained from the Alcoholic Beverage Laws Enforcement Commission the license or permit authorizing such exempt use; and

2. There must be furnished such proof of the exclusive use for such exempt purposes as the Oklahoma Tax Commission may require.

Passed the House of Representatives the 5th day of May, 2010.

Presiding Officer of the House
of Representatives

Passed the Senate the 21st day of April, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 6th
day of May, 20 10,
at 3:00 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 10th **day of**
May, 20 10, **at** 7:37 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
11th **day of** May, 20 10,
at 11:52 **o'clock** A. **M.**

By: