

E N R O L L E D

HOUSE BILL NO. 647.

BY: GARLAND, BEARD, GRAHAM AND RAWLS.

AN ACT DEFINING INTOXICATING AND NON-INTOXICATING BEVERAGES; AMENDING SECTIONS 2618, 2626, 2627, OKLAHOMA STATUTES, 1931, RELATIVE TO THE PURCHASE, SALE AND MANUFACTURE OF INTOXICATING LIQUORS; PROHIBITING THE SALE OF INTOXICATING LIQUOR AS HEREIN DEFINED AND PRESCRIBING THE PUNISHMENT THEREFOR; LEVYING A TAX UPON THE SALE AND DISTRIBUTION WITHIN THE STATE OF OKLAHOMA ON NON-INTOXICATING BEVERAGES AS HEREIN DEFINED; REQUIRING A MANUFACTURERS' AND RETAILERS' LICENSE OR PERMIT; PROVIDING FOR THE MANNER OF COLLECTION OF SAID LICENSE AND TAX; PROVIDING THE MANNER AND PLACE OF SALE AND DISTRIBUTION OF NON-INTOXICATING BEVERAGES AS HEREIN DEFINED; PROVIDING THAT CERTAIN RETAILERS SHALL SECURE A LICENSE FROM THE COUNTY JUDGE AND REGULATING THE ISSUANCE AND CANCELLATION OF SAID LICENSE; PLACING ALL FUNDS COLLECTED HEREUNDER IN THE COMMON SCHOOL FUND TO BE DISTRIBUTED UPON A PER CAPITA SCHOLASTIC ENUMERATION BASIS AS IS PROVIDED BY LAW; REPEALING ALL LAWS IN CONFLICT THEREWITH AND ORDERING A SPECIAL ELECTION TO BE HELD ON THE 11TH DAY OF JULY, 1933, FOR THE EXPRESS PURPOSE OF REFERRING SAID BILL TO A VOTE OF THE PEOPLE AND PRESCRIBING THE PROCEDURE THEREFOR.

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

SECTION 1. Beverages containing more than three and two tenths (3.2%) per cent alcohol by weight are hereby declared to be intoxicating; all other beverages are declared to be non-intoxicating. The manufacture, distribution and sale of beverages containing more than one-half of one (1/2 of 1%) per cent alcohol by volume and not more than three and two-tenths (3.2%) per cent alcohol by weight is hereby declared subject to the rules and regulations hereinafter provided.

SECTION 2. That Section 2618, Compiled Oklahoma Statutes, 1931, be and the same is hereby amended to read as follows:

"Section 2618. It shall be unlawful for any person, individual or corporation to furnish, except as in this chapter provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof or substitute therefor, or to manufacture, sell, barter, give away or otherwise furnish any liquors or compounds of any kind or description whatsoever whether medicated or not which contain more than three and two-tenths (3.2%) per cent of alcohol, measured by weight, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship, or in any way convey, such liquor from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement, or otherwise, or to distribute, publish, or display any

advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this chapter. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), and by imprisonment for not less than thirty (30) days, nor more than six (6) months; Provided, however, that the provisions of this chapter shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries and other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

SECTION 3. That Section 2626, Compiled Oklahoma Statutes, 1931, be and the same is hereby amended to read as follows:

"Section 2626. The keeping, in excess of one quart of any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor, or any liquor or compounds of any kind or description whatsoever, whether medicated or not, which contain more than three and two-tenths (3.2%) per cent of alcohol, measured by weight and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States, or in any manner permitting any other person to have or keep any such liquors in or about his place of business or his residence, or any place of amusement, or recreation, or any public resort, or any club room; provided, however, that the foregoing provision of this section shall not apply to bonded apothecaries, druggists, or pharmacists, as to alcohol purchased by them pursuant to the rules and regulations promulgated by the Government in accordance with the provisions of the laws of this State; or the keeping in excess of one quart of spirituous, or one quart of vinous, or more than one quart of any liquor or compounds of any kind or description whatsoever, whether medicated or not, which contain more than three and two-tenths (3.2%) per cent of alcohol, measured by weight, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States shall be prima facie evidence of an intention to convey, sell or otherwise dispose of such liquors; provided further, that this section shall not be construed in any way to legalize the keeping of any liquors for unlawful purposes irrespective of the amount."

SECTION 4. That Section 2627, Compiled Oklahoma Statutes, 1931, be and the same is hereby amended to read as follows:

"Section 2627. It shall be unlawful for any person to have or keep in excess of one quart of spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or in any manner permit any other person to have or keep, any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain more than three and two tenths (3.2%) per cent of alcohol, measured by weight, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not

subject him to the payment of the special tax required by the laws of the United States; upon, in, or about his place of business, or any place of amusement, or recreation, or any public resort, or any club room, whether such liquor be intended for the personal use of the person so having and keeping the same or not; Provided, however, that the foregoing provision of this section shall not apply to bonded apothecaries, druggists, pharmacists, scientific institutions, universities, colleges, and hospitals as to alcohol purchased by them pursuant to the rules and regulations promulgated by the Governor, in accordance with the provisions of this act. Provided, further, that this section shall not be construed, in any way, to legalize the keeping of such liquors for an unlawful purpose. A violation of any provisions of this section shall be a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred (\$500.00) dollars and by imprisonment for not less than thirty (30) days nor more than six (6) months."

SECTION 5. There is hereby levied on all beverages containing more than one-half of one per cent ($1/2$ of 1%) alcohol measured by volume and not more than three and two-tenths (3.2%) per cent of alcohol measured by weight, manufactured, and, on or after the effective date of this act, sold, or removed, for consumption or sale within the State of Oklahoma, by whatever name such beverage may be called, a tax of \$2.50 for every barrel containing not more than thirty-one (31) gallons, and at a like rate for any other quantities or for the fractional part of a barrel, authorized and defined by law, to be collected as hereinafter provided.

(a) In addition to the above and foregoing tax, every manufacturer of such beverage shall, before manufacturing same, first obtain a permit or license from the Oklahoma Tax Commission and the receipt of payment of said permit or license shall be on file with the Oklahoma Tax Commission before said manufacturer shall commence operation.

(b) Every retail dealer of such beverages coming within the provisions of this Act shall before he offers for sale to the public said beverage, first obtain a license from the Oklahoma Tax Commission and the receipt of said license shall be on file in the office of the Oklahoma Tax Commission before said retail dealer shall offer for sale said beverage.

SECTION 6. Each and every manufacturer referred to in this Act shall pay an annual license or permit to the State of Oklahoma in the sum of one thousand (\$1,000.00) dollars.

Each and every retail dealer referred to in this Section shall pay an annual license or permit to the State of Oklahoma in the sum of one hundred (\$100.00) dollars.

Each wholesaler engaged in the business of selling said beverage to retailers shall pay an annual license or permit to the State of Oklahoma in the sum of two hundred and fifty (\$250.00) dollars.

The required permit fee shall accompany the application and shall be good for one year from the date of its issuance unless sooner revoked by the Commission and may with the approval of the Commission be renewed upon payment of the required fee. Permits shall not be transferred except with the consent of the Commission and each permit shall designate the place of business for which it is issued.

SECTION 7. The tax hereby levied shall be paid to the Oklahoma Tax Commission by all persons liable for a tax or permit hereunder, and it is hereby made the mandatory duty of the Oklahoma Tax Commission to provide and promulgate rules for the collection of the manufacturers' and retailers' license or permit and for the collection of the tax herein imposed upon the sale of all such beverages.

SECTION 8. Each and every licensee subject to the payment of a tax hereunder is hereby required to keep accurate records, covering the business carried on and shall for such reasonable time as may be prescribed by the rules and regulations of the Oklahoma Tax Commission file and keep his invoices or other memoranda, showing all sales or purchases of such beverages as herein defined; and such invoices or memoranda, shall, at all times, be subject to the examination and inspection of any member or agent of the Oklahoma Tax Commission in the enforcement of this Act.

SECTION 9. Five (5%) per centum of all monies collected under this Act shall be placed to the credit of a fund to be designated as "The Oklahoma Enforcement Fund" to be used for the collection of revenue, making refunds, under this Act, and for the enforcement thereof; and the Oklahoma Tax Commission shall appoint necessary employees and incur all necessary expense for such purpose. Upon the presentation of a claim upon itemized voucher in form as required by law, the State Auditor shall draw warrants therefor upon the State Treasury and the same shall be paid out of the aforesaid fund; and the said fund, or so much thereof, as may be necessary is hereby appropriated for the payment of salaries, expenses and refunds as above mentioned; and if at the end of the fiscal year any part of said fund shall remain unexpended such balance shall, by the State Treasurer, be transferred to and become a part of the general revenue fund of the State of Oklahoma.

SECTION 10. Ninety-five (95%) per centum of the monies collected hereunder shall be apportioned quarterly to the several school districts of the State on the scholastic enumeration per capita distribution basis and shall be distributed to the various counties in accordance with the existing law for distribution of like funds and the distribution to the various counties shall be made by the Commission as soon as practicable after the close of each quarterly period ending March 31, June 30, September 30, and December 31, of each year.

SECTION 11. The manufacture and sale of beverages containing more than one-half of one per cent ($1/2$ of 1%) alcohol by volume and not more than three and two-tenths (3.2) per cent alcohol by weight is hereby prohibited by any person, firm, corporation, partnership or individual, except in the following manner and places:

(a) In restaurants, cafes, or other public eating places wherein food is bona fide served and consumed by the public.

(b) In hotels or clubs, however, only in the rooms of guests or members of such hotel and in the club rooms of clubs bona fide incorporated with annual dues of at least six (\$6.00) dollars per member; Provided, however, that no club, restaurant, or cafe, shall be issued a permit as a retailer hereunder by the Oklahoma Tax Commission until and unless the same has been doing business or in operation for at least two (2) months immediately prior to the application for such permit.

(c) By the manufacturer or retailer for sale in the original container and not for consumption upon the premises where sold.

SECTION 12. It shall be unlawful for any person, or persons, firm, or corporation to maintain or operate any place where any beverage containing more than one-half of one per cent ($1/2$ of 1%) of alcohol measured by volume and not more than three and two-tenths (3.2) per cent measured by weight is sold for consumption on the premises without first securing a license issued by the County Judge. The person applying for such license must make a showing once a year, and must satisfy the County Judge that he is a person of good moral character, that he has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or any of the laws commonly called "Prohibition Laws", or convicted of violating any of the gambling laws of the State of Oklahoma, or any other State or of the United States of America. A fee of five (\$5.00) dollars per year shall be charged by the County Judge for the issuance of such license. Upon application being filed the county judge shall give five (5) days' notice by posting such notice. One of said notices to be posted in the county court house and three in the city or township where said beverages are to be sold. Said notice shall contain the name of the applicant and the location of said place of business. Any citizen of said county may appear before the county judge in protest of the issuance of said license.

SECTION 13. The county judge, upon five days' notice, to the person holding such license, shall revoke such license for any one of the following reasons:

(1) Drunkenness of the person holding such license or permitting any intoxicated person to loiter in such places.

(2) As to retailers which are permitted to sell said beverages for consumption upon the premises the sale of said beverages shall be prohibited to any minor under the age of twenty-one (21) years.

(3) For non-payment of any of the taxes or license fees imposed by the provisions of this Act.

(4) Violating any of the laws of the State commonly called "Prohibition Laws", or violating any of the gambling laws of the State or permitting any one to violate any of these laws in such places or violating any of the provisions of this Act or any of the rules and regulations promulgated by the Oklahoma Tax Commission.

SECTION 14. In addition to the penalties herein provided for violations of sections 2, 3, and 4, of this Act, each and every person who refuses to permit the examination of his books, records and files or who ignores or violates the provisions of this Act or the rules and regulations of the Oklahoma Tax Commission, made pursuant hereto, or who shall engage in the sale of said beverages at retail in violation of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars and by imprisonment in the county jail for a period of not less than thirty days nor more than six months.

In addition to the foregoing penalty, any person, firm or corporation, who violates any of the provisions of this act or who refuses to permit the examination of his books, records and files or who ignores or violates the rules and regulations of the Commission made pursuant to this Act, or who violates any provisions of this Act shall be subject to an injunction forbidding such person from continuing to carry on such business until such time as he makes full and complete compliance with the provisions of this Act; and a suit for such injunction may be brought in any court of competent jurisdiction either in the name of the State of Oklahoma upon the relation of the Oklahoma Tax Commission or by the County Attorney of said county.

SECTION 15. All Acts or parts of Acts in conflict herewith are hereby repealed.

SECTION 16. A special election is hereby ordered to be held throughout the State on the 11th day of July, 1933, for the express purpose of referring this bill to a vote of the people of the State of Oklahoma as provided in Sections 2 and 3 of Article 5 of the Constitution of the State of Oklahoma, and such referred measure shall not take effect and shall not be in force unless it is approved by a majority of the votes cast thereon at said special election.

SECTION 17. The ballot title for said referred measure shall be in the following form:

BALLOT TITLE.

Legislative Referendum No. _____

The Gist of the proposition is:

Shall House Bill Number 647 of the Fourteenth Legislature of Oklahoma, defining non-intoxicating beverages as those containing not to exceed 3.2 per centum of alcohol measured by weight; amending Sections 2618, 2626 and 2627, Oklahoma Statutes 1931, making unlawful the sale of intoxicating beverages, prescribing punishment for violating Act; regulating and licensing

manufacturers and retail dealers of such non-intoxicating beverages, levying tax upon sale and distribution thereof in Oklahoma, and providing for disposition of revenue derived therefrom, be approved?

Shall the Bill	_____	Yes

Be Approved?	_____	No.

Passed the House of Representatives the 13th day of April, 1933.

Passed the Senate the 12th day of April, 1933.

R. C. GARLAND

ACTING SPEAKER OF THE HOUSE OF REPRESENTATIVES.

HARDIN BALLARD

ACTING PRESIDENT PRO TEM OF THE SENATE.

Approved the _____ day of _____, 1933 by the Governor of the State of Oklahoma.

CORRECTLY ENROLLED

JULIUS W. COX

ACTING CHAIRMAN COMMITTEE ON ENROLLED AND ENGROSSED BILLS



STATE OF OKLAHOMA
OFFICE OF THE ATTORNEY GENERAL
OKLAHOMA CITY

J. BERRY KING
ATTORNEY GENERAL

June 13, 1933.

Honorable R. A. Sneed,
Secretary of State,
Building

Attention: Miss Una Lee Roberts

Dear Sir:

The Attorney General acknowledges receipt of yours of June 9, transmitting a certified copy of House Bill No. 647 of the 14th Legislature, being "An Act Defining Intoxicating and Non-Intoxicating Beverages, etc." and ordering said measure referred to a vote of the people to be cast at an election to be held on the 11th day of July, 1933. You also transmit a certified copy of a proclamation issued by the Governor of the State under date of June 8, 1933, calling an election to be held throughout the state on July 11, 1933, for the purpose of voting on said House Bill No. 647. You call attention to the fact that said House Bill No. 647 has incorporated therein as Section 17 the ballot title to be used in submitting said measure to the people at said election. The proclamation also sets out said ballot title and provides that the same shall be used. You quote in part the provisions of Section 5632, Compiled Oklahoma Statutes of 1921, and ask that the Attorney General furnish your office with an approval of the ballot title as included in the bill or that we prepare a corrected ballot title and transmit same to you that you may certify same to the State Election Board in accordance with Sections 6632 and 6655, Compiled Oklahoma Statutes of 1921, to which you refer.

In connection with the above, your attention is called to Senate Bill No. 422 passed by the Senate on the 14th day of April, and by the House on April 21, and approved by the Governor on April 26, 1933, which bill orders a referendum upon House Bill No. 647 and sets forth some matters of procedure to be followed in connection with the election to be held thereon on July 11, 1933, Section 2 of said bill provides:

"The ballot title for said referred measure shall be in the following form * * *"

setting out the same ballot title as that incorporated in Section 17 of House Bill No. 647.

No. 2. Honorable R. A. Sneed, 6-13-33.

The procedure set forth in Section 5632, supra, and ensuing statutes, is purely a matter of legislative enactment. It is not prescribed by the provisions of the Constitution. The Legislature is, therefore, free to vary such procedure, provided, of course, that no constitutional requirements are violated. By House Bill No. 647 and again by Senate Bill No. 422 the Legislature has itself adopted and specified the ballot title to be used at the election. It is not necessary, therefore, that same be approved by the Attorney General. Such ballot title as so ordered by the Legislature should be used in printing the ballots and holding the election.

Yours very truly,

FOR THE ATTORNEY GENERAL,



Sam H. Lattimore,
Assistant Attorney General.

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APPROVED IN CONFERENCE 6-13-33