

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 1865

By: Vaughn (Ray)

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 1241, which relates to the prohibition of selling any form of tobacco product to certain minors; providing for license and permit revocation for retail dealers of nonintoxicating beverages for violation of section; amending 37 O.S. 1991, Sections 163.11, as amended by Section 12, Chapter 357, O.S.L. 1992 and 163.16 (37 O.S. Supp. 1993, Section 163.11), which relate to the revocation of licenses and permits of retail dealers of nonintoxicating beverages; adding grounds for such revocation; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1241, is amended to read as follows:

Section 1241. A. Any person who shall furnish to any ~~minor~~ person less than eighteen (18) years of age by gift, sale or otherwise any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a

fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) and be confined in the county jail not less than ten (10) days nor more than ninety (90) days for each offense.

B. Any retail dealer of nonintoxicating beverages as defined in Section 163.2 of Title 37 of the Oklahoma Statutes who is convicted of violating the provisions of this section shall be punished pursuant to subsection A of this section and shall have such retail dealer's licenses and permits issued by the Oklahoma Tax Commission and the district court clerk relating to the sale of nonintoxicating beverages revoked by the Oklahoma Tax Commission and the district court judge.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 163.11, as amended by Section 12, Chapter 357, O.S.L. 1992 (37 O.S. Supp. 1993, Section 163.11), is amended to read as follows:

Section 163.11 A. It shall be unlawful for any person, or persons, to maintain or operate any place where nonintoxicating beverages, as herein defined, are sold for consumption on or off the premises without first securing a permit issued by the district court clerk in and for the county wherein such premises are located.

B. The person applying for such permit must make a showing once a year, and must satisfy the district court clerk 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 of any of the gambling laws of the state, or any other state of the United States, within three (3) years immediately preceding the date of his petition, or any of the laws commonly called "Prohibition Laws", or had any permit or license to sell nonintoxicating liquors revoked in any county of this state within twelve (12) months; and that, at the time of his petition for a license, he is not the holder of a retail liquor dealer's permit or license from the United States government to

engage in the sale of intoxicating liquor. Nor shall any permit be issued to sell nonintoxicating beverages in any place, location or address, for which there is outstanding license or permit from the United States government.

C. No permit shall be issued to sell nonintoxicating beverages for on-premises consumption unless the person applying for such permit shall have signed an affidavit stating that the location of the building in which nonintoxicating beverages are to be sold is not prohibited by the provisions of Section 163.24 of this title.

D. A fee of Ten Dollars (\$10.00) per year shall be charged for the issuance of such permit, which fee shall be deposited in the county court fund.

E. Upon petition being filed, the district court clerk shall give thirty (30) days' notice for an initial application by causing the same to be posted by the entrance on the front of the building in which said nonintoxicating beverages are to be sold; and a copy of said notice shall also be mailed to the district attorney, the sheriff and the chief of police or marshal of any city or town in which said business is to be operated. Said notice shall contain the name of the applicant and the location of said place of business.

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

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

H. All testimony before the district court shall be under oath.

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

~~(1)~~ 1. Drunkenness of the person holding such permit or permitting any intoxicated person to loiter in or around his place of business;

~~(2)~~ 2. Person under the influence of drugs holding such permit or permitting any drugged person to loiter in or around his place of business;

~~(3)~~ 3. The sale to any person under twenty-one (21) years of age of nonintoxicating beverages for consumption on the premises;

~~(4)~~ 4. Permitting persons under the age of twenty-one (21) in a separate or enclosed bar area which has as its main purpose the selling or serving of nonintoxicating beverages for consumption on the premises unless said person's parent or legal guardian is present, in violation of the provisions of Sections 241 through 246 of this title;

~~(5)~~ 5. Nonpayment of any of the taxes or license fees imposed by the provisions of this act on complaint of the Oklahoma Tax Commission;

~~(6)~~ 6. Violating any of the laws of the state commonly called "Prohibition Laws" or violating any of the gambling laws of the state or permitting anyone to violate any of said laws in such places or violating any of the provisions of this act;

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

~~(8)~~ 8. Proof that the operator has in his possession or on the premises in which said business is being operated, a federal excise or occupational tax stamp or receipt, designating such person or

premises as the person or place for dealing in liquor or evidencing the payment of a tax for being a dealer in such liquor; ~~or by~~

~~(9)~~ 9. Violating any law pertaining to the use, possession, or sale of drugs or narcotics or the violation of the narcotics laws of the State of Oklahoma or the United States; or by

10. Conviction for the violation of Section 1241 of Title 21 of the Oklahoma Statutes relating to the sale of any form of tobacco product to any person less than eighteen (18) years of age.

J. After the revocation of any such permit, for any of the above reasons, except paragraph ~~(5)~~ 5 of subsection I of this section for nonpayment of taxes, or license fees, no new permit shall be issued to the same person for the same location or premises prior to the expiration of a period of one (1) year from the date of such revocation.

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

SECTION 3. AMENDATORY 37 O.S. 1991, Section 163.16, is amended to read as follows:

Section 163.16 Any license issued to a wholesaler or retail dealer, as defined herein, may be refused or revoked by the Oklahoma Tax Commission upon ten (10) days' notice in writing to such

wholesaler or retail dealer, and after opportunity to be heard before the said Commission for any of the following reasons:

~~(a)~~ 1. The refusal by the judge of the district court to issue any permit to a retail dealer, or the cancellation by the judge of the district court of the county permit of any retail dealer;

~~(b)~~ 2. Nonpayment of delinquent tax, license fee or permit fees or penalties;

~~(c)~~ 3. Possession or display for sale by any retail dealer of nonintoxicating beverages, as herein defined, upon which the tax imposed by any law of this state shall not have been paid;

~~(d)~~ 4. Failure on the part of any wholesaler or retail dealer to comply with all laws, or the regulations prescribed by the Oklahoma Tax Commission pursuant thereto relating to the enforcement duties imposed upon the Oklahoma Tax Commission by this act; or

5. Conviction of any retail dealer for the violation of Section 1241 of Title 21 of the Oklahoma Statutes relating to the sale of any form of tobacco product to any person less than eighteen (18) years of age.

In any case, before a revocation of license by the Commission, any licensee shall be given ten (10) days' notice in writing and an opportunity to be heard shall be afforded, after which order of revocation may be issued by the Oklahoma Tax Commission, and the same shall thereupon become final; except, that no notice or hearing shall be required in case of a revocation by the Oklahoma Tax Commission after county permit has been revoked by the county judge or application for renewal of county permit shall have been refused by the judge of the district court.

SECTION 4. This act shall become effective September 1, 1994.

44-2-7611

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