

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2632

By: Davis

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Section 538, which relates to penalties for violation of the Oklahoma Alcoholic Beverage Control Act; making certain persons civilly liable for damages for selling or furnishing nonintoxicating and alcoholic beverages to persons under twenty-one years of age; providing for codification; and providing an effective date.

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

A. Any person who sells or furnishes any beverage 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, to an individual whom the seller or furnisher of the beverage knows or should have known to be under twenty-one (21) years of age shall be liable in a civil action for any damages caused by such individual while that individual was under the influence of the beverage.

B. A retail dealer, as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, shall be held responsible for the sale or furnishing of such beverages to an individual under twenty-one (21) years of age by a servant, agent, employee or representative of the retail dealer, whom the servant, agent, employee or representative knows or should have known to be under twenty-one (21) years of age.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 538, is amended to read as follows:

Section 538. A. Any person who shall operate a whiskey still with intent to produce alcoholic beverages or any person who shall carry on the business of a distiller without having in his possession a valid and existing distiller's license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall be guilty of a felony and upon conviction be fined not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or both such fine and imprisonment.

B. Any person who shall file a false or fraudulent return in connection with any tax imposed by the Oklahoma Alcoholic Beverage Control Act, or willfully evade, or attempt to evade, any tax herein levied shall be guilty of a felony and upon conviction be fined not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or both such fine and imprisonment.

C. Any person who shall knowingly engage in any activity or perform any transaction or act for which a license is required under the Oklahoma Alcoholic Beverage Control Act, not having such license, shall be guilty of a misdemeanor and for the first offense be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00) and imprisoned for not less than thirty (30) days nor more than six

(6) months, and for a second or subsequent offense shall be guilty of a felony and be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00), or imprisoned in the State Penitentiary for not more than one (1) year, or both such fine and imprisonment.

D. Any person holding a license issued pursuant to the Oklahoma Alcoholic Beverage Control Act who shall sell or deliver alcoholic beverage to any person not entitled to purchase or receive same, except as provided in subsection F of this section, or who shall possess for sale any alcoholic beverage which he is not entitled to sell under his license, or any person who buys any alcoholic beverage, either retail or wholesale, from any person other than a licensed dealer under the terms of the Oklahoma Alcoholic Beverage Control Act, shall be guilty of a misdemeanor and upon conviction be fined not more than One Thousand Five Hundred Dollars (\$1,500.00), or imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment.

E. Any person under twenty-one (21) years of age who shall misrepresent his age in writing or by presenting false documentation of age for the purpose of inducing any person to sell or serve him alcoholic beverage or issue him a bottle club membership card, or who enters or attempts to enter a package store or a separate or enclosed bar area as designated by the ABLE Commission, shall be guilty of a misdemeanor and fined not more than Fifty Dollars (\$50.00). In addition, if a person is convicted or pleads guilty to a violation of the provisions of this subsection in any court having jurisdiction over said offense, the court may order the Department of Public Safety to cancel or deny the offender's privilege to operate a motor vehicle and, upon such order, shall require that the operator's or chauffeur's license, if any, be surrendered to the Department pursuant to Section 6-209 of Title 47 of the Oklahoma Statutes. The cancellation or denial period shall be for one (1)

year, or until the person reaches twenty-one (21) years of age, whichever is longer.

Any person whose driving privileges are ordered canceled or denied pursuant to this section may petition the court of original jurisdiction for review of the order. Upon notice and hearing, the court may modify or withdraw the order as the court deems appropriate except:

1. A court may not withdraw an order for at least ninety (90) days following the issuance of the order if it is the first such order issued regarding the person named; and

2. A court may not withdraw an order for at least six (6) months following the issuance of the order if it is the second or subsequent such order issued regarding the person named.

If the Department receives written notice from the court of original jurisdiction that it has withdrawn such an order, the Department shall immediately reinstate any driving privileges that have been canceled or denied under this section, without requiring payment of a reinstatement fee.

F. Any person who shall knowingly sell, furnish or give alcoholic beverage to a person under twenty-one (21) years of age shall be guilty of a felony, and shall be fined not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisoned in the State Penitentiary for not more than five (5) years, or both such fine and imprisonment. The ABLE Commission shall revoke the license of any person convicted of a violation of this subsection. Any person who sells or furnishes any alcoholic beverage to an individual whom the seller or furnisher of the beverage knows or should have known to be under twenty-one (21) years of age shall be liable in a civil action for any damages caused by such individual while that individual was under the influence of the beverage. Each licensee shall be held responsible for the sale or furnishing of such beverages to an

individual under twenty-one (21) years of age by a servant, agent, employee or representative of the licensee, whom the servant, agent, employee or representative knows or should have known to be under twenty-one (21) years of age.

G. Any person who shall knowingly sell, furnish or give alcoholic beverage to an insane, mentally deficient, or intoxicated person shall be guilty of a felony, and shall be fined not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned in the State Penitentiary for not more than one (1) year, or both such fine and imprisonment.

H. The payment of the special tax required of liquor dealers by the United States by any person within this state without a corresponding state license shall constitute prima facie evidence of an intention to violate the provisions of the Oklahoma Alcoholic Beverage Control Act.

I. Any person operating a cafe, restaurant, club or any place of recreation who permits any person to be drunk or intoxicated in said place of business shall be guilty of a misdemeanor, and shall be fined not more than One Hundred Dollars (\$100.00), or imprisoned for not more than thirty (30) days or by both such fine and imprisonment.

J. Any person selling or keeping a package store open to sell any alcoholic beverage during any day or hours not authorized by the Oklahoma Alcoholic Beverage Control Act shall be guilty of a misdemeanor.

SECTION 3. This act shall become effective September 1, 1994.

44-2-8633

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