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SHORT TITLE: Intoxicating liquors and tobacco products; changing penalties for sale of low-point beer and tobacco to minors; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 394

By: Brown

AS INTRODUCED

An Act relating to the sale of intoxicating liquors and tobacco products; amending 37 O.S. 1991, Sections 244, as last amended by Section 2, Chapter 188, O.S.L. 1996, 528, and Section 4, Chapter 137, O.S.L. 1994, as amended by Section 2, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Sections 244 and 600.3), which relate to sale of low-point beer to minors, the Oklahoma Alcoholic Beverage Control Act, and the Prevention of Youth Access to Tobacco Act; requiring revocation of certain permit for violation of statute prohibiting sale of tobacco to a minor; clarifying language; requiring revocation of certain license for violation of statute prohibiting sale of tobacco or low-point beer to a minor; increasing fines for furnishing tobacco products to minors; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 244, as last amended by Section 2, Chapter 188, O.S.L. 1996 (37 O.S. Supp. 1996, Section 244), is amended to read as follows:

Section 244. A. The ~~violation by~~ conviction of any ~~person~~ permit holder, or a servant, agent, employee, or representative of any permit holder, for a violation of the provisions of ~~Sections~~

Section 241 or, 243, or 600.3 of this title, or any statute pertaining to the sale of low-point beer, as defined in Section 163.2 of this title, shall ~~be sufficient ground for~~ require revocation by the judge of the district court of any permit held by ~~such person~~ the permit holder authorizing the sale of low-point beer. ~~The permit shall be revoked if the person is convicted of a violation of the provisions of Section 241 or 243 of this title after a prior conviction of the provisions of Section 241 or 243 of this title.~~ No new permit shall be issued to ~~such person~~ the permit holder or to a relative of ~~such person~~ the permit holder for a period of twelve (12) months after such revocation. ~~The permit shall be revoked if a servant, agent, employee or representative of the permit holder is convicted of a violation of the provisions of Section 241 or 243 of this title after that person has been convicted of a prior violation of the provisions of Section 241 or 243 of this title within the previous twelve (12) months.~~

B. Each holder of a retail license or permit to sell and dispense low-point beer, as defined in Section 163.2 of this title, shall be held responsible for any violation of Section 241 or 243 of this title committed by a servant, agent, employee or representative of the license or permit holder.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 528, is amended to read as follows:

Section 528. A. Any license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, by order of the Alcoholic Beverage Laws Enforcement Commission, after due notice and hearing, may be revoked or suspended if the ABLE Commission finds or has grounds to believe that the licensee has:

1. Violated any rule adopted by the ABLE Commission;
2. Procured a license through fraud, or misrepresentation, or concealment of a material fact;

3. Made any false representation or statement to the ABLE Commission in order to prevent or induce action by the ABLE Commission;

4. Maintained an unsanitary establishment or has supplied impure or otherwise deleterious beverages or food;

5. Stored, possessed, mixed or served on the premises of a bottle club any alcoholic beverage upon which the tax levied by Section 553 of this title has not been paid as provided for in the Oklahoma Alcoholic Beverage Control Act, in a county of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized;

6. Misrepresented to a customer or the public any alcoholic beverage sold by the licensee; or

7. Had any permit or license issued by the Oklahoma Tax Commission and required by the Oklahoma Alcoholic Beverage Control Act, suspended or revoked by the Tax Commission.

B. The ABLE Commission may revoke or suspend the license of any mixed beverage, caterer or bottle club licensee if the ABLE Commission finds or has grounds to believe that such licensee:

1. Has acted as an agent of a manufacturer or wholesaler of alcoholic beverages;

2. Is a manufacturer or wholesaler of alcoholic beverages;

3. Has borrowed money or property or accepted gratuities or rebates from a manufacturer or wholesaler of alcoholic beverages;

4. Has obtained the use of equipment from any manufacturer or wholesaler of alcoholic beverages or any agent thereof;

5. Has violated any of the provisions of the Oklahoma Alcoholic Beverage Control Act for which mandatory revocation or suspension is not required; or

6. Has been convicted on or after July 1, 1985, of a violation of any state or federal law relating to alcoholic beverage for which mandatory revocation or suspension is not required.

C. The ABLE Commission shall revoke the license of any licensee if ~~said~~ the Commission finds:

1. That the licensee knowingly sold alcoholic beverages or allowed such beverages to be sold, delivered or furnished to any person under the age of twenty-one (21) years, or to any person visibly intoxicated or adjudged insane or mentally deficient;

2. That the licensee, any general or limited partner of the licensee, or in the case of a corporation, an officer or director of the corporation, has been convicted of a felony;

3. That, in the case of a wholesaler, Class B wholesaler, or retail package store licensee, the holder of the license or any member of a general or limited partnership which is the holder of such a license, has been convicted of a violation of a prohibitory law relating to the sale, manufacture, or transportation of alcoholic beverages which constitutes a felony or a misdemeanor;

4. That the licensee, or any employee of the licensee sold tobacco to a minor in violation of Section 600.3 of this title; or

5. That the licensee, or any employee of the licensee sold low-point beer to a person under twenty-one (21) years of age in violation of Sections 241 and 243 of this title.

D. If the ABLE Commission shall find by a preponderance of the evidence as in civil cases that the holder of a package store license has knowingly sold any alcoholic beverage to any person under the age of twenty-one (21) years, after a public hearing it shall revoke ~~said~~ the license and no discretion as to ~~said~~ the revocation shall be exercised by the ABLE Commission.

E. The ABLE Commission shall have the authority to promulgate rules and regulations to establish a penalty schedule for violations of any provision of the Oklahoma Alcoholic Beverage Control Act or any rule or regulation of the ABLE Commission. The schedule shall provide for suspension or revocation of any license for major and

minor violations as determined by the ABLE Commission. Penalties shall be increasingly severe with each violation by a licensee.

Provided, that for a fourth major violation by a licensee within a twenty-four-month period the penalty shall be mandatory revocation of license. The twenty-four-month period shall be calculated from the date of the most recent violation as set forth in an order signed by the Director or the designee of the Director.

F. The ABLE Commission may impose a monetary penalty in lieu of or in addition to suspension of a license. The amount of fine for a major violation shall be computed by multiplying the proposed number of days of the suspension period by One Hundred Dollars (\$100.00). The amount of fine for a minor violation shall be computed by multiplying the number of days of the proposed suspension period by Fifty Dollars (\$50.00).

G. The failure of any licensee to pay a fine or serve a suspension imposed by the ABLE Commission shall result in the revocation of the license of said licensee.

H. If the ABLE Commission finds that public health, safety or welfare require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceeding for revocation or other action, pursuant to the provisions of Section 314 of Title 75 of the Oklahoma Statutes.

SECTION 3. AMENDATORY Section 4, Chapter 137, O.S.L. 1994, as amended by Section 2, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Section 600.3), is amended to read as follows:

Section 600.3 A. It is unlawful for any person to sell or furnish in any manner any tobacco product to another person who is under eighteen (18) years of age, or to purchase in any manner a tobacco product on behalf of any such person. ~~Provided;~~ provided, however, that it shall not be unlawful for an employee under eighteen (18) years of age to handle such products when required in the performance of the employee's duties.

B. A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age.

C. When a person violates subsection A or B of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) shall assess ~~such person~~ an administrative fine of ~~Twenty-five Dollars (\$25.00)~~ Five Hundred Dollars (\$500.00) for the first offense within a one-year period, ~~Fifty Dollars (\$50.00) for the second offense within a one-year period,~~ and ~~Seventy-five Dollars (\$75.00)~~ One Thousand Dollars (\$1,000.00) for a ~~third~~ second offense or subsequent offense within a one-year period. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age, shall be a defense to any action brought pursuant to this subsection.

D. If the sale is made by an employee of the owner of a store at which tobacco products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine.

E. Upon failure of the employee to pay the administrative fine within ninety (90) days of the day of the assessment of such fine, the ABLE Commission shall notify the Department of Public Safety and the Department shall suspend or not issue a driver license to ~~said~~ the employee until proof of payment has been furnished to the Department of Public Safety.

F. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations for any violation of subsection A or B of this section, each individual franchise or business location shall be deemed a separate entity.

G. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under

provisions of this section, but the provisions of ~~such~~ those ordinances shall be the same as provided for in this section, and the enforcement provisions under ~~such~~ those ordinances shall not be more stringent than those of this section.

SECTION 4. This act shall become effective November 1, 1997.

46-1-0118

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