

ENGROSSED SENATE
BILL NO. 640

By: Brown of the Senate
and
Calvey of the House

[tobacco products - low-point beer - minors - penalty
- effective date -

emergency -]

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 by gift, sale or otherwise~~ give any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product to a minor shall, upon conviction, be guilty of a misdemeanor ~~and upon conviction thereof shall be sentenced to pay.~~

B. Any person who shall sell any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product to a minor shall, upon conviction, be guilty of a misdemeanor punishable, for the first offense, by a fine of not less than ~~Twenty-five Dollars (\$25.00)~~ Two Hundred Dollars (\$200.00) nor more than ~~Two Hundred Dollars (\$200.00)~~ and One Thousand Dollars (\$1,000.00) or be confined in the county jail for not less than ten (10) days nor more than ninety (90) days ~~for each offense~~ or by both such fine and confinement. A second offense under this subsection shall be a misdemeanor punishable by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) or confinement in the county jail for not less than ninety (90) days or by both such fine and confinement. A third or subsequent offense under this subsection shall be a felony

1 punishable by a fine of not less than Ten Thousand Dollars
2 (\$10,000.00) nor more than Twenty Thousand Dollars (\$20,000.00) or
3 placement in the custody of the Department of Corrections for a
4 period of not less than two (2) years nor more than five (5) years,
5 or by both such fine and imprisonment.

6 SECTION 2. AMENDATORY 37 O.S. 1991, Section 241, as
7 amended by Section 40, Chapter 274, O.S.L. 1995 (37 O.S. Supp. 1998,
8 Section 241), is amended to read as follows:

9 Section 241. A. It shall be unlawful for any person to sell,
10 barter, or give to any person under twenty-one (21) years of age any
11 low-point beer, as defined in Section 163.2 of this title.

12 B. It shall be unlawful for any person who holds a license to
13 sell and dispense low-point beer for consumption on the premises, or
14 any agent, servant, or employee of said license holder, to permit
15 any person under twenty-one (21) years of age to be admitted to or
16 remain in a separate or enclosed bar area of the licensed premises
17 unless said person's parent or legal guardian is present, which has
18 as its main purpose the selling or serving of low-point beer for
19 consumption on the premises. The provisions of this section shall
20 not prohibit persons under twenty-one (21) years of age from being
21 admitted to an area which has as its main purpose some objective
22 other than the sale or serving of low-point beer, in which sales or
23 serving of said beverages are incidental to the main purpose, as
24 long as persons under twenty-one (21) years of age are not sold or
25 served said beverages; however, the incidental service of food in
26 the bar area shall not exempt a licensee, agent, servant, or
27 employee from the provisions of this section.

28 C. It shall be unlawful for any person who holds a license to
29 sell and dispense low-point beer, for consumption on the premises,
30 or any agent, servant or employee of said license holder to permit
31 any person under twenty-one (21) years of age to consume any low-
32 point beer on the licensed premises.

1 D. Any person violating the provisions of subsection A ~~7~~ or B ~~or~~
2 ~~C~~ of this section shall upon conviction be guilty of a misdemeanor.
3 Any person violating the provisions of subsection C of this section
4 shall, upon conviction, be guilty of a misdemeanor punishable, for
5 the first offense, by a fine of not less than Two Hundred Dollars
6 (\$200.00) nor more than One Thousand Dollars (\$1,000.00) or by
7 imprisonment in the county jail for not less than ten (10) days nor
8 more than ninety (90) days or by both such fine and confinement. A
9 second offense under subsection C of this section shall be a
10 misdemeanor punishable by a fine of not less than Two Thousand
11 Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00)
12 or confinement in the county jail for not less than ninety (90) days
13 or by both such fine and confinement. A third or subsequent offense
14 under subsection C of this section shall be a felony punishable by a
15 fine of not less than Ten Thousand Dollars (\$10,000.00) nor more
16 than Twenty Thousand Dollars (\$20,000.00) or placement in the
17 custody of the Department of Corrections for a period of not less
18 than two (2) years nor more than five (5) years, or by both such
19 fine and imprisonment. The Alcoholic Beverage Laws Enforcement
20 Commission shall permanently revoke the license of any person
21 convicted of a felony pursuant to this subsection.

22 SECTION 3. AMENDATORY Section 4, Chapter 137, O.S.L.
23 1994, as last amended by Section 1, Chapter 171, O.S.L. 1997 (37
24 O.S. Supp. 1998, Section 600.3), is amended to read as follows:

25 Section 600.3 A. It is unlawful for any person to sell or
26 furnish in any manner any tobacco product to another person who is
27 under eighteen (18) years of age, or to purchase in any manner a
28 tobacco product on behalf of any such person. It shall not be
29 unlawful for an employee under eighteen (18) years of age to handle
30 tobacco products when required in the performance of the employee's
31 duties.
32

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

6 If an individual engaged in the sale or distribution of tobacco
7 products has demanded proof of age from a prospective purchaser or
8 recipient who is not under eighteen (18) years of age, the failure
9 to subsequently require proof of age shall not constitute a
10 violation of subsection B of this section.

11 C. 1. When a person violates subsection A or B of this
12 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission
13 shall impose an administrative fine of:

- 14 a. not less than Two Hundred Dollars (\$200.00) and not
15 more than ~~One Hundred Dollars (\$100.00)~~ One Thousand
16 Dollars (\$1,000.00) for the first offense,
- 17 b. not less than Two Thousand Dollars (\$2,000.00) and not
18 more than ~~Two Hundred Dollars (\$200.00)~~ Five Thousand
19 Dollars (\$5,000.00) for the second offense within a
20 one-year period following the first offense, or
- 21 c. not less than Ten Thousand Dollars (\$10,000.00) and not
22 more than ~~Three Hundred Dollars (\$300.00)~~ Twenty
23 Thousand Dollars (\$20,000.00), ~~or~~ and not more less
24 than ~~fifteen (15)~~ thirty (30) days suspension of the
25 store's license to sell tobacco products, ~~or both such~~
26 ~~fine and suspension~~ for a third or subsequent offense
27 within a one-year period following the first offense,
28 ~~or~~
- 29 d. not more than ~~Three Hundred Dollars (\$300.00)~~, or not
30 more than ~~thirty (30)~~ days suspension of the store's
31 license to sell tobacco products, ~~or both such fine and~~

1 ~~suspension for a fourth or subsequent offense within a~~
2 ~~one-year period following the first offense.~~

3 2. When it has been determined that a penalty shall include a
4 license suspension, the ABLE Commission shall notify the Oklahoma
5 Tax Commission, and the Oklahoma Tax Commission shall suspend the
6 store's license to sell tobacco products at the location where the
7 offense occurred for the period of time prescribed by the ABLE
8 Commission.

9 3. Proof that the defendant demanded, was shown, and reasonably
10 relied upon proof of age shall be a defense to any action brought
11 pursuant to this subsection.

12 D. If the sale is made by an employee of the owner of a store
13 at which tobacco products are sold at retail, the employee shall be
14 guilty of the violation and shall be subject to the fine. If the
15 sale is made by an employee who has previously been twice found to
16 be in violation of this section, the owner of the store, if the
17 owner knew of the employee's previous violations, shall also be
18 found to be in violation and shall be subject to an identical fine.

19 E. On or before December 15, 1997, the ABLE Commission shall
20 adopt rules establishing a method of notification of storeowners
21 when one of their employees has been determined to be in violation
22 of this section by the ABLE Commission or convicted of a violation
23 by a municipality.

24 F. 1. Upon failure of the employee to pay the administrative
25 fine within ninety (90) days of the day of the assessment of such
26 fine, the ABLE Commission shall notify the Department of Public
27 Safety and the Department shall suspend or not issue a driver
28 license to the employee until proof of payment has been furnished to
29 the Department of Public Safety.

30 2. Upon failure of a storeowner to pay the administrative fine
31 within ninety (90) days of the assessment of the fine, the ABLE
32 Commission shall notify the Oklahoma Tax Commission and the Oklahoma

1 Tax Commission shall suspend the store's license to sell tobacco
2 products until proof of payment has been furnished to the Oklahoma
3 Tax Commission.

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

9 H. Cities and towns may enact and municipal police officers may
10 enforce ordinances prohibiting and penalizing conduct under
11 provisions of this section, but the provisions of such ordinances
12 shall be the same as provided for in this section, and the
13 enforcement provisions under such ordinances shall not be more
14 stringent than those of this section.

15 SECTION 4. AMENDATORY Section 9, Chapter 137, O.S.L.
16 1994, as last amended by Section 15, Chapter 171, O.S.L. 1997 (37
17 O.S. Supp. 1998, Section 600.8), is amended to read as follows:

18 Section 600.8 A. It shall be unlawful for any person to
19 distribute tobacco product samples to any person under eighteen (18)
20 years of age.

21 B. Notwithstanding subsection A of this section, no person
22 shall distribute tobacco product samples in or on any public street,
23 sidewalk, or park that is within three hundred (300) feet of any
24 playground, school, or other facility when the facility is being
25 used primarily by persons under eighteen (18) years of age.

26 C. When a person violates subsection A or B of this section,
27 the Alcoholic Beverage Laws Enforcement (ABLE) Commission shall
28 impose an administrative fine of:

29 1. Not less than Two Hundred Dollars (\$200.00) and ~~Not~~ not more
30 than ~~One Hundred Dollars (\$100.00)~~ One Thousand Dollars (\$1,000.00)
31 for the first offense;

32

1 2. Not less than Two Thousand Dollars (\$2,000.00 and ~~Not~~ not
2 more than ~~Two Hundred Dollars (\$200.00)~~ Five Thousand Dollars
3 (\$5,000.00) for the second offense; and

4 3. Not less than Ten Thousand Dollars (\$10,000.00) and ~~Not~~ not
5 more than ~~Three Hundred Dollars (\$300.00)~~ Twenty Thousand Dollars
6 (\$20,000.00) for a third or subsequent offense.

7 D. Upon failure of an individual to pay an administrative fine
8 within ninety (90) days of the assessment of the fine, the ABLE
9 Commission shall notify the Department of Public Safety, and the
10 Department shall suspend or not issue a driver license to the
11 individual until proof of payment has been furnished to the
12 Department of Public Safety.

13 E. Cities and towns may enact and municipal police officers may
14 enforce ordinances prohibiting and penalizing conduct under
15 provisions of this section, but the provisions of such ordinances
16 shall be the same as provided for in this section, and the
17 enforcement provisions under such ordinances shall not be more
18 stringent than those of this section.

19 SECTION 5. This act shall become effective July 1, 1999.

20 SECTION 6. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.

24
25
26
27
28
29
30
31
32

