ENROLLED HOUSE
BILL NO. 2188

By: Paulk, Mitchell, Boyd and Nance of the House

and

Brown of the Senate

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Section 246, as last amended by Section 2, Chapter 364, O.S.L. 1997 (37 O.S. Supp. 1999, Section 246), which relates to low-point beer; modifying prohibition against persons under twenty-one years of age consuming or possessing low-point beer; amending Section 4, Chapter 391, O.S.L. 1999 (37 O.S. Supp. 1999, Section 518.3), which relates to the location of certain establishments and clubs; adding retail package stores to location prohibition; adding protest procedure; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 246, as last amended by Section 2, Chapter 364, O.S.L. 1997 (37 O.S. Supp. 1999, Section 246), is amended to read as follows:

Section 246. A. No person under twenty-one (21) years of age shall consume or possess with the intent to consume low-point beer, as defined in Section 163.2 of this title~~, in any public place~~. It shall be unlawful for any person under twenty-one (21) years of age to purchase or attempt to purchase low-point beer, as defined in Section 163.2 of this title, except under supervision of law enforcement officers. Any person violating any of the provisions of this section shall be guilty, upon conviction, of a misdemeanor and punished by a fine not to exceed One Hundred Dollars ($100.00) or by appropriate community service not to exceed twenty (20) hours. Provided, the provisions of this section shall not apply when such persons are under the direct supervision of their parent or guardian, but in no instance shall this exception be interpreted to allow such persons to consume such beverages in any place licensed to dispense low-point beer as provided in Section 163.11 of this title.

B. If the premises of a holder of a license to sell low-point beer contains a separate or enclosed bar area which has as its main purpose the sale or serving of low-point beer for consumption on the premises, no person under twenty-one (21) years of age shall enter, attempt to enter, or remain in said area. The provisions of this subsection shall not prohibit persons under twenty-one (21) years of age from entering or remaining in an area which has as its main purpose some objective other than the sale or serving of low-point

beer, in which sales or serving of said beverages are incidental to the main purpose, if the persons under twenty-one (21) years of age are not sold or served or do not consume low-point beer anywhere on the premises; however, the incidental service of food in the bar area shall not exempt persons under twenty-one (21) years of age from the provisions of this subsection. Any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and punished by a fine not to exceed One Hundred Dollars ($100.00).

C. Except as otherwise provided, an admission charge shall not be considered in any calculation designed to determine the main purpose of an area pursuant to subsection B of this section. For purposes of this section, an "admission charge" shall mean any form of consideration received by an establishment from a person in order for that person to gain entry into the establishment or an area thereof.

D. The provisions of subsection C of this section shall not apply:

1. If only persons eighteen (18) years of age or older are permitted to enter the licensed premises;

2. If the licensed premises are owned or operated by a service organization or fraternal establishment which is exempt under Section 501(c)(19), (8), or (10) of the Internal Revenue Code; or

3. To a public event held in a facility owned or operated by any agency, political subdivision or public trust of this state.

E. A violation of the provisions of this section shall not be a basis for instituting juvenile proceedings to determine if a person under eighteen (18) years of age is a delinquent child; however, if a person under eighteen (18) years of age habitually violates the provisions of this section, juvenile proceedings may be brought to determine if the person is a delinquent child. A person under eighteen (18) years of age who has been convicted of violating the provisions of this section shall be subject to the penalty provisions provided in this section.

SECTION 2. AMENDATORY Section 4, Chapter 391, O.S.L. 1999 (37 O.S. Supp. 1999, Section 518.3), is amended to read as follows:

Section 518.3 A. It shall be unlawful for any mixed beverage establishment or bottle club which has been licensed by the Alcoholic Beverage Laws Enforcement Commission and which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises, or retail package store, to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities. The distance indicated in this section shall be measured from the nearest property line of such public or private school or church to the nearest perimeter wall of the premises of any such mixed beverage establishment ~~or~~, bottle club, or retail package store which has been licensed to sell alcoholic beverages. The provisions of this section shall not apply to mixed beverage establishments or bottle clubs which have been licensed to sell alcoholic beverages for on-premises consumption or retail

package stores prior to the effective date of this act. If any school or church shall be established within three hundred (300) feet of any retail package store, mixed beverage establishment or bottle club subject to the provisions of this section after such retail package store, mixed beverage establishment or bottle club has been licensed, the provisions of this section shall not be a deterrent to the renewal of such license if there has not been a lapse of more than sixty (60) days. When any mixed beverage establishment or bottle club subject to the provisions of this section which has a license to sell alcoholic beverages for on-premises consumption or retail package store changes ownership or the operator thereof is changed and such change of ownership results in the same type of business being conducted on the premises, the provisions of this section shall not be a deterrent to the issuance of a license to the new owner or operator if he or she is otherwise qualified.

B. 1. Any interested party may protest the application for or granting of mixed beverage establishment or bottle club which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises, or retail package store, license based on an alleged violation of this section. To be considered by the ABLE Commission, the protest must:

a. be submitted in writing,

b. be signed by the person protesting,

c. contain the mailing address and address of residence, if different from the mailing address of the protester,

d. contain the title of the person signing the protest, if the person is acting in an official capacity as a church or school official, and

e. contain a concise statement explaining why the application is being protested.

2. Within thirty (30) days of the date of receipt of a written protest, the ABLE Commission shall conduct a hearing on the protest if the protest meets the requirements of paragraph 1 of this subsection.

3. As used in this subsection, "interested party" means:

a. a parent or legal guardian whose child or children attend the church or school which is alleged to be closer to the mixed beverage establishment or bottle club which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises, or retail package store, than is allowed by this section,

b. an official of a church which is alleged to be closer to the mixed beverage establishment or bottle club which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises, or retail package store, than is allowed by this section, or

c. an official of a school which is alleged to be closer to the mixed beverage establishment or bottle club which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises, or retail package store, than is allowed by this section.

SECTION 3. This act shall become effective November 1, 2000.

Passed the House of Representatives the 28th day of February, 2000.

Speaker of the House of Representatives

Passed the Senate the 18th day of April, 2000.

President of the Senate