

CS for SB 1570

THE STATE SENATE  
Tuesday, February 28, 2006

Committee Substitute for  
Senate Bill No. 1570

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1570 - By: GARRISON of the Senate and ROUSSELOT of the House.

[ power hour drinking - defining term - penalty - effective date - emergency ]

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1215, is amended to read as follows:

Section 1215. A. It ~~shall be~~ is unlawful for any person under the age of twenty-one (21) years to be in the possession of any ~~intoxicating~~ alcoholic beverage containing more than three and two-tenths percent (3.2%) alcohol by weight while such person is upon any public street, road, or highway or in any public building or place.

B. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a term of not more than thirty (30) days, or by a fine in an amount not exceeding One Hundred Dollars (\$100.00), or by both such fine and imprisonment.

1        C. For purposes of this section, a person is not twenty-one  
2 (21) years of age until ten o'clock a.m. on the same day as the  
3 person's twenty-first birthday.

4        SECTION 2.        AMENDATORY        21 O.S. 2001, Section 1216, is  
5 amended to read as follows:

6        Section 1216. A. It is unlawful for any person to participate  
7 in any "power hour drinking" in any public place or any  
8 establishment licensed to sell, serve or consume any alcoholic  
9 beverage or low-point beer on the premises. It is unlawful for any  
10 person to cause, aid, abet or encourage any person to participate in  
11 "power hour drinking".

12        B. For purposes of this section, "power hour drinking" means a  
13 person upon turning twenty-one (21) years of age consumes, or  
14 attempts to consume, more than two (2) alcoholic beverages or low-  
15 point beers, or any combination thereof, in the first hour of being  
16 of legal age to consume alcoholic beverages and low-point beer. For  
17 purposes of this section, a person is not twenty-one (21) years of  
18 age until ten o'clock a.m. on the same day as the person's twenty-  
19 first birthday.

20        C. Any person violating the provisions of ~~Section 1~~ of this act  
21 section shall be guilty of a misdemeanor, and, upon conviction  
22 thereof, shall be punished by imprisonment in the county jail ~~not to~~  
23 exceed for a term of not more than thirty (30) days, or by payment

1 ~~of~~ a fine in an amount not to exceed exceeding One Hundred Dollars  
2 (\$100.00), or by both such fine and imprisonment.

3 D. If a violation of this section results in the death of a  
4 person, the punishment shall be a felony punishable by imprisonment  
5 in the custody of the Department of Corrections for a term of not  
6 more than five (5) years.

7 SECTION 3. AMENDATORY 37 O.S. 2001, Section 537, as last  
8 amended by Section 1, Chapter 196, O.S.L. 2005 (37 O.S. Supp. 2005,  
9 Section 537), is amended to read as follows:

10 Section 537. A. No person shall:

11 1. Knowingly sell, deliver, or furnish alcoholic beverages to  
12 any person under twenty-one (21) years of age;

13 2. Sell, deliver or knowingly furnish alcoholic beverages to an  
14 intoxicated person or to any person who has been adjudged insane or  
15 mentally deficient;

16 3. Open a retail container or consume alcoholic beverages on  
17 the premises of a retail package store;

18 4. Import into this state, except as provided for in the  
19 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;  
20 provided, that nothing herein shall prohibit the importation or  
21 possession for personal use of not more than one (1) liter of  
22 alcoholic beverages upon which the Oklahoma excise tax is  
23 delinquent;

1           5. Receive, possess, or use any alcoholic beverage in violation  
2 of the provisions of the Oklahoma Alcoholic Beverage Control Act;

3           6. Transport into, within, or through this state more than one  
4 (1) liter of alcoholic beverages upon which the Oklahoma excise tax  
5 has not been paid unless the person accompanying or in charge of the  
6 vehicle transporting same shall possess a true copy of a bill of  
7 lading, invoice, manifest or other document particularly identifying  
8 the alcoholic beverages being transported and showing the name and  
9 address of the consignor and consignee;

10          7. Knowingly transport in any vehicle upon a public highway,  
11 street or alley any alcoholic beverage except in the original  
12 container which shall not have been opened and the seal upon which  
13 shall not have been broken and from which the original cap or cork  
14 shall not have been removed, unless the opened container be in the  
15 rear trunk or rear compartment, which shall include the spare tire  
16 compartment in a vehicle commonly known as a station wagon and panel  
17 truck, or any outside compartment which is not accessible to the  
18 driver or any other person in the vehicle while it is in motion;

19          8. Drink intoxicating liquor in public except on the premises  
20 of a licensee of the Alcoholic Beverage Laws Enforcement Commission  
21 who is authorized to sell or serve alcoholic beverages by the  
22 individual drink or be intoxicated in a public place. This  
23 provision shall be cumulative and in addition to existing law;

1           9. Forcibly resist lawful arrest, or by physical contact  
2 interfere with an investigation of any infringement of the Oklahoma  
3 Alcoholic Beverage Control Act or with any lawful search or seizure  
4 being made by an inspector or agent of the ABLE Commission, when  
5 such person knows or should know that such acts are being performed  
6 by a state, county, or municipal officer, inspector or agent of the  
7 ABLE Commission;

8           10. Manufacture, duplicate, counterfeit or in any way imitate  
9 any bottle club membership card required to be issued by the ABLE  
10 Commission without the permission of the Commission;

11          11. Consume or possess alcoholic beverages on the licensed  
12 premises of a bottle club unless such person possesses a valid  
13 membership card for that club issued by the club; or

14          12. Knowingly possess any bottle club membership card required  
15 to be issued by the ABLE Commission, which has been manufactured,  
16 counterfeited, imitated or in any way duplicated without the  
17 permission of the Commission.

18          B. No licensee of the ABLE Commission shall:

19           1. Receive, possess, or sell any alcoholic beverage except as  
20 authorized by the Oklahoma Alcoholic Beverage Control Act and by the  
21 license or permit which the licensee holds;

22           2. Employ any person under the age of twenty-one (21) in the  
23 selling or handling of alcoholic beverages. Provided, that a mixed

1 beverage, beer and wine, caterer, special event or bottle club  
2 licensee may employ servers who are at least eighteen (18) years of  
3 age, except persons under twenty-one (21) years of age may not serve  
4 in designated bar or lounge areas, and a mixed beverage, beer and  
5 wine, caterer, special event or bottle club licensee may employ or  
6 hire musical bands who have musicians who are under twenty-one (21)  
7 years of age if each such musician is either accompanied by a parent  
8 or legal guardian or has on their person, to be made available for  
9 inspection upon demand by any ABLE Commission officer or law  
10 enforcement officer, a written, notarized affidavit from the parent  
11 or legal guardian giving the underage musician permission to perform  
12 in designated bar or lounge areas;

13 3. Give any alcoholic beverage as a prize, premium or  
14 consideration for any lottery, game of chance or skill or any type  
15 of competition;

16 4. Advertise or offer "happy hours" or any other means or  
17 inducements to stimulate the consumption of alcoholic beverages  
18 including:

19 a. deliver more than two drinks to one person at one  
20 time; 1

21 b. sell or offer to sell to any person or group of  
22 persons any drinks at a price less than the price  
23 regularly charged for such drinks during the same

- 1 calendar week, except at private functions not open to  
2 the public~~†~~‡,
- 3 c. sell or offer to sell to any person an unlimited  
4 number of drinks during any set period of time for a  
5 fixed price, except at private functions not open to  
6 the public~~†~~‡,
- 7 d. sell or offer to sell drinks to any person or group of  
8 persons on any one day at prices less than those  
9 charged the general public on that day, except at  
10 private functions not open to the public~~†~~‡,
- 11 e. increase the volume of alcoholic beverages contained  
12 in a drink without increasing proportionately the  
13 price regularly charged for such drink during the same  
14 calendar week~~†~~‡,
- 15 f. encourage or permit, on the licensed premises, any  
16 game or contest which involves drinking or the  
17 awarding of drinks as prizes, or
- 18 g. encourage or permit, on the licensed premises, any  
19 person to participate in power hour drinking. "Power  
20 hour drinking" means a person upon turning twenty-one  
21 (21) years of age consumes, or attempts to consume,  
22 more than two (2) alcoholic beverages or low-point  
23 beers, or any combination thereof, in the first hour

1                   of being of legal age to consume alcoholic beverages  
2                   and low-point beer.

3 Provided that the provisions of this paragraph shall not prohibit  
4 the advertising or offering of food or entertainment in licensed  
5 establishments;

6       5. Permit or allow any patron or person to exit the licensed  
7 premises with an open container of any alcoholic beverage.

8 Provided, that this prohibition shall not be applicable to closed  
9 original containers of alcoholic beverages which are carried from  
10 the licensed premises of a bottle club by a patron, closed original  
11 wine containers removed from the premises of restaurants, hotels,  
12 and motels, or to closed original containers of alcoholic beverages  
13 transported to and from the place of business of a licensed caterer  
14 by the caterer or an employee of the caterer; or

15       6. Serve or sell alcoholic beverages with an expired license  
16 issued by the ABLE Commission.

17       C. No package store licensee shall:

18       1. Purchase or receive any alcoholic beverage other than from a  
19 person holding a brewer, wholesaler or Class B wholesaler license  
20 issued pursuant to the Oklahoma Alcoholic Beverage Control Act;

21       2. Suffer or permit any retail container to be opened, or any  
22 alcoholic beverage to be consumed, on the licensed premises;

1           3. Sell, or keep package store premises open for the purpose of  
2 selling, any alcoholic beverages at any hour other than between the  
3 hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided,  
4 that no such sales shall be made, or package store premises be  
5 allowed to remain open for the purpose of making such sales, on the  
6 day of any General, Primary, Runoff Primary or Special Election  
7 while the polls are open whether on a national, state, county or  
8 city election or on New Year's Day, Memorial Day, the Fourth of  
9 July, Labor Day, Thanksgiving Day or Christmas Day;

10          4. Operate a retail package store unless such store shall be  
11 located in a city or town having a population in excess of two  
12 hundred (200) according to the latest Federal Decennial Census;

13          5. Sell any alcoholic beverage on credit; provided that  
14 acceptance by a retail liquor store of a cash or debit card, or a  
15 nationally recognized credit card, in lieu of actual cash payment  
16 does not constitute the extension of credit; provided further, as  
17 used in this section:

18           a. "cash or debit card" means any instrument or device  
19                whether known as a debit card or by any other name,  
20                issued with or without fee by an issuer for the use of  
21                the cardholder in depositing, obtaining or  
22                transferring funds from a consumer banking electronic  
23                facility, and

1           b. "nationally recognized credit card" means any  
2           instrument or device, whether known as a credit card,  
3           credit plate, charge plate or by any other name,  
4           issued with or without fee by an issuer for the use of  
5           the cardholder in obtaining money, goods, services or  
6           anything else of value on credit which is accepted by  
7           over one hundred merchants;

8           6. Offer or furnish any prize, premium, gift or similar  
9           inducement to a consumer in connection with the sale of alcoholic  
10          beverage, except that goods or merchandise included by the  
11          manufacturer in packaging with alcoholic beverages or for packaging  
12          with alcoholic beverages shall not be included in this prohibition,  
13          but no wholesaler or package store shall sell any alcoholic beverage  
14          prepackaged with other goods or merchandise at a price which is  
15          greater than the price at which the alcoholic beverage alone is  
16          sold;

17          7. Permit any person under twenty-one (21) years of age to  
18          enter into, remain within or loiter about the licensed premises; or

19          8. Pay for alcoholic beverages by a check or draft which is  
20          dishonored by the drawee when presented to such drawee for payment;  
21          and the ABLE Commission may cancel or suspend the license of any  
22          retailer who has given a check or draft, as maker or endorser, which  
23          is so dishonored upon presentation.

1 D. No wholesaler licensee shall:

2 1. Sell or deliver any amount of spirits or wines to any  
3 package store licensee on Saturday or Sunday; or

4 2. Sell or deliver any amount of spirits or wines to any  
5 package store licensee on New Year's Day, Memorial Day, the Fourth  
6 of July, Labor Day, Veterans Day, Thanksgiving Day or Christmas Day.

7 E. No mixed beverage or beer and wine licensee shall:

8 1. Purchase or receive any alcoholic beverage other than from a  
9 person holding a wholesaler or Class B wholesaler license issued  
10 pursuant to the Oklahoma Alcoholic Beverage Control Act; provided, a  
11 mixed beverage or beer and wine licensee whose premises are a  
12 restaurant may purchase wine produced at wineries in this state  
13 directly from an Oklahoma winemaker as provided in Section 3 of  
14 Article XXVIII of the Oklahoma Constitution;

15 2. Transport alcoholic beverages from the place of purchase to  
16 the licensed premises unless the licensee also holds a private  
17 carrier license issued by the ABLE Commission;

18 3. Use or allow the use of any mark or label on a container of  
19 alcoholic beverage which is kept for sale which does not clearly and  
20 precisely indicate the nature of the contents or which might deceive  
21 or conceal the nature, composition, quantity, age or quality of such  
22 beverage;

1           4. Keep or knowingly permit any alcoholic beverage to be kept,  
2 brought or consumed on the licensed premises which is not allowed to  
3 be sold or served upon such premises; or

4           5. Allow any person under twenty-one (21) years of age to enter  
5 into, remain within or loiter about the designated bar area of the  
6 licensed premises, except for members of a musical band employed or  
7 hired as provided in paragraph 2 of subsection B of this section  
8 when the band is to perform within such area.

9           The prohibition in this subsection against persons under twenty-  
10 one (21) years of age entering or remaining within the designated  
11 bar area of the licensed premises shall not apply, if the licensed  
12 premises are closed to the public during a time the premises are  
13 legally permitted to be open for business and the premises are used  
14 for a private party at which alcoholic beverages may be served to  
15 persons twenty-one (21) years of age or older. Any alcoholic  
16 beverages served at a private party on the licensed premises may be  
17 purchased from the licensee at a negotiated price or purchased  
18 privately and served at the private party on the licensed premises.  
19 Any licensee who desires to conduct such a private party shall  
20 notify the ABLE Commission, in writing, at least ten (10) calendar  
21 days prior to the private party. The notification shall include the  
22 date, time, and purpose of the private party and any other  
23 information the ABLE Commission may deem necessary.

- 1 F. No bottle club licensee shall:
- 2 1. Use or allow the use of any mark or label on a container of
- 3 alcoholic beverage which does not clearly and precisely indicate the
- 4 nature of the contents or which might deceive or conceal the nature,
- 5 composition, quantity, age or quality of any such beverage;
- 6 2. Act as an agent for any bottle club member and purchase any
- 7 alcoholic beverage for the member;
- 8 3. Use or allow the use of any pool system of storage or
- 9 purchase of alcoholic beverages;
- 10 4. Allow any person to enter or remain in the designated bar or
- 11 lounge area of the club unless that person possesses a valid
- 12 membership card for that club issued by the club;
- 13 5. Sell any alcoholic beverage;
- 14 6. Deliver or furnish to any club member any alcoholic beverage
- 15 that does not belong to the member;
- 16 7. Serve alcoholic beverages to any person who does not possess
- 17 a valid membership card for that club issued by the club;
- 18 8. Issue a membership card for the club to a person under
- 19 twenty-one (21) years of age; or
- 20 9. Allow any person under twenty-one (21) years of age to enter
- 21 into, remain within or loiter about the designated bar area of the
- 22 licensed premises, except for members of a musical band employed or

1 hired as provided in paragraph 2 of subsection B of this section  
2 when the band is to perform within such area.

3 The prohibition in this subsection against persons under twenty-  
4 one (21) years of age entering or remaining within the designated  
5 bar area of the licensed premises shall not apply, if the licensed  
6 premises are closed to the public during a time the premises are  
7 legally permitted to be open for business and the premises are used  
8 for a private party at which alcoholic beverages may be served to  
9 persons twenty-one (21) years of age or older. Any alcoholic  
10 beverages served at a private party on the licensed premises may be  
11 purchased from the licensee at a negotiated price or purchased  
12 privately and served at the private party on the licensed premises.  
13 Any licensee who desires to conduct such a private party shall  
14 notify the ABLE Commission, in writing, at least ten (10) calendar  
15 days prior to the private party. The notification shall include the  
16 date, time, and purpose of the private party and any other  
17 information the ABLE Commission may deem necessary.

18 G. No special event or caterer licensee shall:

19 1. Purchase or receive any alcoholic beverage other than from a  
20 person holding a wholesaler or Class B wholesaler license issued  
21 pursuant to the provisions of the Oklahoma Alcoholic Beverage  
22 Control Act; provided, a special event or caterer licensee may  
23 purchase wine produced at wineries in this state directly from an

1 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the  
2 Oklahoma Constitution; or

3 2. Transport alcoholic beverages from the place of purchase to  
4 the licensed premises unless the licensee also holds a private  
5 carrier license issued by the ABLE Commission.

6 H. No person operating a cafe, restaurant, club, or any place  
7 of recreation shall permit any person to be drunk or intoxicated in  
8 the person's place of business.

9 I. With respect to purchasing, possessing, consuming, selling,  
10 furnishing and serving alcoholic beverages, a person is not twenty-  
11 one (21) years of age until ten o'clock a.m. on the same day as the  
12 person's twenty-first birthday.

13 SECTION 4. AMENDATORY 37 O.S. 2001, Section 241, is  
14 amended to read as follows:

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

18 B. It shall be unlawful for any person who holds a license to  
19 sell and dispense low-point beer for consumption on the premises, or  
20 any agent, servant, or employee of said license holder, to permit  
21 any person under twenty-one (21) years of age to be admitted to or  
22 remain in a separate or enclosed bar area of the licensed premises  
23 unless said person's parent or legal guardian is present, which has

1 as its main purpose the selling or serving of low-point beer for  
2 consumption on the premises. The provisions of this section shall  
3 not prohibit persons under twenty-one (21) years of age from being  
4 admitted to an area which has as its main purpose some objective  
5 other than the sale or serving of low-point beer, in which sales or  
6 serving of said beverages are incidental to the main purpose, as  
7 long as persons under twenty-one (21) years of age are not sold or  
8 served said beverages; however, the incidental service of food in  
9 the bar area shall not exempt a licensee, agent, servant, or  
10 employee from the provisions of this section.

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

16 D. Any person violating the provisions of subsection A, B or C  
17 of this section shall upon conviction be guilty of a misdemeanor.

18 E. With respect to purchasing, possessing, consuming, selling,  
19 furnishing and serving low-point beer, a person is not twenty-one  
20 (21) years of age until ten o'clock a.m. on the same day as the  
21 person's twenty-first birthday.

22 SECTION 5. This act shall become effective July 1, 2006.

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

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-22-06 - DO  
6 PASS, As Amended and Coauthored.