

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1706

By: Balkman

AS INTRODUCED

An Act relating to intoxicating liquors; creating the Prevention of Youth Access to Alcohol Act; providing short title; amending 37 O.S. 2001, Section 163.11, as amended by Section 2, Chapter 170, O.S.L. 2004 (37 O.S. Supp. 2004, Section 163.11), which relates to low-point beer permits; modifying length of time for mandatory revocation of permit under certain circumstances; prohibiting certain acts and providing penalty therefor; amending 37 O.S. 2001, Sections 241, 244 and 246, which relate to laws pertaining to low-point beer and persons under twenty-one years of age; modifying certain penalty; clarifying that revocation of certain permit is mandatory; requiring revocation of certain driver licenses and denial of driving privileges for certain persons; amending 47 O.S. 2001, Section 6-107.1, which relates to cancellation or denial of driving privileges for certain persons; modifying periods of cancellation or denial; creating a revolving fund and stating purpose therefor; providing for codification; providing for noncodification; 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 not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Prevention of Youth Access to Alcohol Act".

SECTION 2. AMENDATORY 37 O.S. 2001, Section 163.11, as amended by Section 2, Chapter 170, O.S.L. 2004 (37 O.S. Supp. 2004, Section 163.11), is amended to read as follows:

Section 163.11 A. It shall be unlawful for any person to maintain or operate any place where low-point beer, as herein defined, is sold for consumption on or off the premises without first securing a permit issued by the district court clerk of the county in which the premises are located.

B. 1. The person applying for a permit must file a verified application every three (3) years and that he or she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of this state, or of any other state of the United States, within three (3) years immediately preceding the date of his or her petition, or any of the laws commonly called "Prohibition Laws", or had any permit or license to sell low-point beer revoked in any county of this state within twelve (12) months.

2. A person who has been convicted of a felony shall not be eligible for a permit unless the person received a pardon for the felony or a period of ten (10) years has elapsed since the completion of the sentence imposed for the felony.

C. No permit shall be issued to sell low-point beer for on-premises consumption unless the person applying for such permit shall have signed an affidavit stating that the location of the building in which low-point beer is to be sold is not prohibited by the provisions of Section 163.27 of this title.

D. A fee of One Hundred Fifty Dollars (\$150.00) shall be charged for the issuance or renewal of such three-year permit, which fee shall be deposited in the county court fund, in addition to other fees required by law.

E. Upon petition being filed, the district court clerk shall give fifteen (15) days' notice for an initial application, and it is the applicant's responsibility to cause the same to be posted by the entrance on the front of the building in which said low-point beer is to be sold and to file proof of posting in such case; and a copy of said notice shall also be mailed to the district attorney, the sheriff and the chief of police or marshal of any city or town in which said business is to be operated. Said notice shall contain the name of the applicant and the location of said place of business. The initial permit shall be valid for a period of three

(3) years and shall expire if not renewed with proper showing required by subsection B of this section, and upon payment of proper fees. A permit may be renewed within ten (10) days of expiration, upon proper application pursuant to subsection B of this section and payment of the proper fees, but without the payment of any late fees. Provided, however, that if a proper application under subsection B of this section is filed within eleven (11) days but not more than thirty (30) days after the expiration date of the permit, upon payment of a fee of One Hundred Dollars (\$100.00) in addition to the initial permit fee, the court clerk is authorized to treat said application as one for renewal and to issue a renewal permit to the applicant, if all requirements have otherwise been met by the applicant. A renewal permit granted during the thirty-day grace period shall become effective upon the date of its issuance by the court clerk.

F. A permit issued prior to September 1, 1994, shall be valid until it expires and shall be renewed for a period of three (3) years or until expiration of the sales tax permit issued by the Oklahoma Tax Commission, if any, held by the person at the time of such renewal, whichever is earlier. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the court clerk.

G. A person who has obtained a permit pursuant to this section and who ceases to maintain or operate any place where low-point beer is sold for consumption on or off the premises shall be entitled to receive a refund of the permit fee from the district court clerk prorated with respect to the amount of time remaining until expiration of the permit, upon surrender of the existing permit to the district court clerk. The manner and prorated refund shall be prescribed by the Administrative Director of the Courts.

H. If there are no protests and the petition is sufficient on its face, then said permit shall be granted by the district court

clerk. Provided, that if any citizen of the county files a written protest setting forth objections, then the district court clerk shall advise the chief judge who shall assign such petition to a district judge or associate district judge for hearing.

I. The application for such permit must be verified and in writing, contain the information above required, and must be set for hearing on a date named in the notice required to be posted.

J. All testimony before the district court shall be under oath.

K. A judge of the district court, upon five (5) days' notice to the person holding such permit, shall revoke such permit for any one of the following reasons:

1. Drunkenness of the person holding such permit or permitting any intoxicated person to loiter in or around his or her place of business;

2. Person under the influence of drugs holding such permit or permitting any drugged person to loiter in or around his or her place of business;

3. The sale to any person under twenty-one (21) years of age of low-point beer;

4. Permitting persons under the age of twenty-one (21) in a separate or enclosed bar area which has as its main purpose the selling or serving of low-point beer for consumption on the premises unless said person's parent or legal guardian is present, in violation of the provisions of Sections 241 through 246 of this title;

5. Nonpayment of any of the taxes or license fees imposed by the provisions of Section 163.1 et seq. of this title on complaint of the Oklahoma Tax Commission;

6. Violating any of the laws of the state commonly called "Prohibition Laws" or violating any of the gambling laws of the state or permitting anyone to violate any of said laws in such

places or violating any of the provisions of Section 163.1 et seq. of this title;

7. Conviction for the violation of any of the laws of this state or the United States for the sale or possession of intoxicating liquors within three (3) years immediately preceding the issuance of such dealer's license; or

8. Violating any law pertaining to the use, possession, or sale of drugs or narcotics or the violation of the narcotics laws of the State of Oklahoma or the United States.

L. After the revocation of any such permit, for any of the above reasons, except paragraph 5 of subsection K of this section for nonpayment of taxes, or license fees, or paragraph 3 or 4 of subsection K of this section for sale of low-point beer to a person under twenty-one (21) years of age or permitting a person under twenty-one (21) years of age in a separate or enclosed bar area, no new permit shall be issued to the same person for the same location or premises prior to the expiration of a period of one (1) year from the date of such revocation. After revocation of a permit for a violation of paragraph 3 or 4 of subsection K of this section, no new permit shall be issued to the same person for the same location or premises prior to the expiration of a period of three (3) years from the date of such revocation.

M. On or before the tenth day of each month each district court clerk shall file with the Oklahoma Tax Commission, on forms prescribed and furnished by the Commission, a report showing the name, address, and county permit number of each such person to whom a county permit has been issued or whose permit has been revoked, or who shall have been refused a county permit, during the previous calendar month. In case of the revocation of a permit by a judge of the district court, the district court clerk shall within five (5) days report such action to the Oklahoma Tax Commission. If county permits shall have been issued, revoked or refused during the month,

the district court clerk shall make a report accordingly to the Commission.

N. Upon application to and approval by the court clerk of the district court, a retail dealer as defined by Section 163.2 of this title who meets the requirements of this section and Section 163.11a of this title may be granted a special event permit without the requirement of notice or posting, after payment of a fee of Twenty-five Dollars (\$25.00) in addition to other fees required by law, which fees shall not be refundable or apportionable. A special event permit issued under this subsection shall authorize the holder thereof to sell and distribute low-point beer for a period not to exceed ten (10) consecutive days from the date of issuance. A separate permit shall be required for each individual place of business, whether permanent or a temporary assemblage. Provided, retail dealers shall not be required to obtain a special permit for each bar or service unit within the same enclosed area or within the general vicinity of each other for events held outside a physical structure. A special event permit shall not be renewable. A municipality shall not, by ordinance or otherwise, refuse to issue a special event permit or special event license on the basis that the applicant already possesses a permit or license in the applicant's same name.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 220 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. No owner, operator, partner, manager, agent, employee, or person having supervisory control of any establishment licensed to sell low-point beer for consumption on the premises and subject to the provisions of subsection B of Section 246 of Title 37 of the Oklahoma Statutes shall:

1. Sell or offer to sell to any person or group of persons any low-point beer at a price less than the price regularly charged for

low-point beer during the same calendar week, except at private functions not open to the public;

2. Sell or offer to sell to any person an unlimited number of drinks of low-point beer during any set period of time for a fixed price, except at private functions not open to the public; or

3. Sell or offer to sell low-point beer to any person or group of persons on any one (1) day at prices less than those charged the general public on that day, except at private functions not open to the public.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each offense.

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

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

B. It shall be unlawful for any person who holds a license to sell and dispense low-point beer for consumption on the premises, or any agent, servant, or employee of said license holder, to permit any person under twenty-one (21) years of age to be admitted to or remain in a separate or enclosed bar area of the licensed premises unless said person's parent or legal guardian is present, which has as its main purpose the selling or serving of low-point beer for consumption on the premises. The provisions of this section shall not prohibit persons under twenty-one (21) years of age from being admitted to 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, as long as persons under twenty-one (21) years of age are not sold or served said beverages; however, the incidental service of food in

the bar area shall not exempt a licensee, agent, servant, or employee from the provisions of this section.

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

D. Any person violating the provisions of subsection A, B or C of this section shall upon conviction be guilty of a ~~misdemeanor~~ 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. One-half (1/2) of any fine collected shall be deposited in the Prevention of Youth Access to Alcohol Revolving Fund, established by Section 8 of this act.

SECTION 5. AMENDATORY 37 O.S. 2001, Section 244, is amended to read as follows:

Section 244. A. The violation by any person of the provisions of ~~Sections~~ Section 241 or 243 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 mandatory revocation by the judge of the district court of any permit held by such person 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 or to a relative of such person for a period of ~~twelve (12) months~~ three (3) years 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 6. AMENDATORY 37 O.S. 2001, 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. 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. In addition, if the person has an Oklahoma driver license issued by the Department of Public Safety, that license shall be revoked for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. If the person does not have an Oklahoma driver license, the person shall be ineligible to obtain an Oklahoma driver license for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. 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). In addition, if the person has an Oklahoma driver license issued by the Department of Public Safety, that license shall be revoked for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. If the person does not have an Oklahoma driver license, the person shall be ineligible to obtain an Oklahoma driver license for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes.

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 7. AMENDATORY 47 O.S. 2001, Section 6-107.1, is amended to read as follows:

Section 6-107.1 A. When any district court, municipal court of record or any municipal court in a city or town in which the judge is an attorney licensed to practice law in this state has determined that a person under the age of eighteen (18) years has committed any offense described in subsection C of this section, or that a person eighteen (18), nineteen (19), or twenty (20) years of age has committed an offense described in Section ~~±~~ 11-906.4 of this ~~act~~ title, the court shall notify the Department of Public Safety on a form prescribed by the Department as provided in Section 6-107.2 of this title.

B. The notice shall include the name, date of birth, physical description and, if known, the driver license number of the person. The notice shall contain ~~a recommendation~~ an order to the Department to cancel or deny driving privileges for a specified period of time,

~~in the discretion of the court,~~ except as otherwise provided by law, as follows:

1. For a period ~~not to exceed~~ of six (6) months for a first offense, from the date of the offense or from the date the person reaches sixteen (16) years of age, whichever period of time is longer;

2. For a period ~~not to exceed~~ of one (1) year for a second offense, from the date of the offense or from the date the person reaches sixteen (16) years of age, whichever period of time is longer; or

3. For a period ~~not to exceed~~ of two (2) years for a third or subsequent offense, from the date of the offense or from the date the person reaches sixteen (16) years of age, whichever period of time is longer; or

4. ~~Until~~ In the discretion of the court, until the person attains twenty-one (21) years of age, if that period of time would be longer than the period of time provided in paragraph 1, 2 or 3 of this subsection.

The court shall send a copy of the notice to the person first class, postage prepaid.

C. In addition to the administrative revocation of driving privileges pursuant to Section 754 of this title, and the mandatory revocation of driving privileges pursuant to Section 6-205.1 of this title, this section applies to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, or consumption of beer, alcohol, or any beverage containing alcohol and to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, trafficking, cultivation, consumption, ingestion, inhalation, injection, or absorption of any controlled dangerous substance as

defined by paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes or any substance which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor functions.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-107.7 of Title 47, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Department of Mental Health and Substance Abuse Services to be designated the "Prevention of Youth Access to Alcohol Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department of Mental Health and Substance Abuse Services from fines collected pursuant to Section 241 of Title 37 of the Oklahoma Statutes. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Mental Health and Substance Abuse Services for the purpose of programs and campaigns to educate the public and law enforcement about the dangers and consequences of providing alcohol to minors. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 9. This act shall become effective November 1, 2005.

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