

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 441

By: Myers

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 856.1, which relates to causing, aiding and abetting drug-related crimes; modifying language; creating crime to cause, aid and abet certain person to consume certain substance and operate a motor vehicle; setting felony penalty; prohibiting suspended or deferred sentence for certain convictions; amending 37 O.S. 2001, Section 241, which relates to sale of low-point beer to under age person; providing certain exception to misdemeanor penalty; prohibiting prosecution for certain inducement; amending 37 O.S. 2001, Section 538, which relates to penalties for alcoholic beverages; modifying language; modifying felony penalty for acts without a license and furnishing alcoholic beverages to intoxicated persons; making gender neutral; providing certain exception to certain penalty; prohibiting prosecution for certain inducement to sell alcoholic beverage; setting misdemeanor penalty for operating during prohibited hours; amending 47 O.S. 2001, Section 11-903, which relates to negligent homicide; creating crime of contributory negligent homicide; setting felony penalty; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 856.1, is amended to read as follows:

Section 856.1 A. Every person who shall knowingly, intentionally or willfully cause, aid, abet or encourage a minor child to:

1. Distribute, dispense, possess or manufacture a controlled dangerous substance, as provided in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes;

2. Create, distribute, or possess a counterfeit controlled dangerous substance, as defined by Section 2-101 of Title 63 of the Oklahoma Statutes;

3. Distribute any imitation controlled substance as defined by Section 2-101 of Title 63 of the Oklahoma Statutes;

4. Conspire or participate in any scheme, plan or act for the purposes of avoiding, eluding or evading arrest or detection by law enforcement authorities for crimes involving controlled substances as defined by Section 2-101 of Title 63 of the Oklahoma Statutes; or

5. Violate any penal provisions of the Uniform Controlled Dangerous Substances Act,

shall be guilty of a felony, upon conviction, punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not more than twenty (20) years and a fine ~~of~~ in an amount not more than exceeding Two Hundred Thousand Dollars (\$200,000.00). Said sentence shall not be subject to statutory provisions for suspended ~~sentences~~, or deferred sentences, except when the conviction is for a first offense.

B. In addition to any provision of subsection A of this section, every person who shall knowingly, intentionally or willfully cause, aid, abet or encourage any person under twenty-one (21) years of age to consume any substance prohibited by the Uniform Controlled Dangerous Substances Act or any low-point beer or alcoholic beverage, as such terms are defined by Title 37 of the Oklahoma Statutes, or any combination of such substances, and to operate, drive or be in actual physical control of any motor vehicle in violation of Section 11-902 of Title 47 of the Oklahoma Statutes, shall be guilty of a felony, upon conviction, punishable by imprisonment in the custody of the Department of Corrections for a term not more than seven (7) years and a fine in an amount not exceeding Ten Thousand Dollars (\$10,000.00). Such sentence shall

not be subject to statutory provisions for suspended or deferred sentences, except when the conviction is for a first offense.

SECTION 2. 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. The penalty for any violation of this section shall be as provided in subsection D of this section, except as provided in Section 1 of this act.

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, except as otherwise provided by law. Any person who sells, furnishes or gives any low-point beer to a person who has induced the prohibited conduct by misrepresentation, false or fraudulent means shall not be prosecuted, except when the person had knowledge or should have known that the age of such person was misrepresented.

SECTION 3. AMENDATORY 37 O.S. 2001, Section 538, is amended to read as follows:

Section 538. A. Any person who shall operate a whiskey still with intent to produce alcoholic beverages or any person who shall carry on the business of a distiller without having in his possession a valid and existing distiller's license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall be guilty of a felony ~~and,~~ upon conviction ~~be fined,~~ punishable by a fine in an amount not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), ~~or imprisoned by imprisonment in the State Penitentiary custody of the Department of Corrections for a term~~ not more than three (3) years, or by both such fine and imprisonment.

B. Any person who shall file a false or fraudulent return in connection with any tax imposed by the Oklahoma Alcoholic Beverage Control Act, or willfully evade, or attempt to evade, any tax herein levied shall be guilty of a felony ~~and,~~ upon conviction ~~be fined,~~ punishable by a fine in an amount not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), ~~or imprisoned by imprisonment in the State Penitentiary custody of the Department of Corrections for a term~~ not ~~more than~~ exceeding three (3) years, or by both such fine and imprisonment.

C. Any person who shall knowingly engage in any activity or perform any transaction or act for which a license is required under the Oklahoma Alcoholic Beverage Control Act, not having such

license, shall be guilty of a misdemeanor ~~and, upon conviction,~~ for the first offense ~~be fined~~ and shall be punished by a fine in an amount not more than Two Thousand Five Hundred Dollars (\$2,500.00) and ~~imprisoned~~ imprisonment in the county jail for a term not less than thirty (30) days nor more than six (6) months, ~~and for a.~~ Any second or subsequent offense conviction, shall be ~~guilty of~~ a felony ~~and be fined~~ punishable by a fine in an amount not more than Two Thousand Five Hundred Dollars (\$2,500.00), ~~or imprisoned by~~ imprisonment in the State Penitentiary custody of the Department of Corrections for a term not ~~more than one (1) year~~ exceeding two (2) years, or by both such fine and imprisonment.

D. Any person holding a license issued pursuant to the Oklahoma Alcoholic Beverage Control Act who shall sell or deliver alcoholic beverage to any person not entitled to purchase or receive same, except as provided in subsection F of this section, or who shall possess for sale any alcoholic beverage which ~~he~~ the person is not entitled to sell under ~~his~~ license, or any person who buys any alcoholic beverage, either retail or wholesale, from any person other than a licensed dealer under the terms of the Oklahoma Alcoholic Beverage Control Act, shall be guilty of a misdemeanor ~~and, upon conviction be fined,~~ punishable by a fine in an amount not more than One Thousand Five Hundred Dollars (\$1,500.00), ~~or~~ ~~imprisoned~~ imprisonment in the county jail for a term not more than six (6) months, or by both such fine and imprisonment.

E. Any person under twenty-one (21) years of age who shall misrepresent his or her age in writing or by presenting false documentation of age for the purpose of inducing any person to sell or serve ~~him~~ alcoholic beverage or issue ~~him~~ a bottle club membership card to the person, or who enters or attempts to enter a package store or a separate or enclosed bar area as designated by the ABLE Commission, shall be guilty of a misdemeanor ~~and fined,~~ upon conviction, punishable by a fine in an amount not more than

Fifty Dollars (\$50.00). In addition, if a person is convicted or pleads guilty to a violation of the provisions of this subsection in any court having jurisdiction over said offense, the court may order the Department of Public Safety to cancel or deny the offender's privilege to operate a motor vehicle and, upon such order, shall require that ~~the operator's or chauffeur's license, if any,~~ any driver or chauffer license be surrendered to the Department pursuant to Section 6-209 of Title 47 of the Oklahoma Statutes. The cancellation or denial period shall be for one (1) year, or until the person reaches twenty-one (21) years of age, whichever is longer.

Any person whose driving ~~privileges are~~ privilege is ordered cancelled or denied pursuant to this section may petition the court of original jurisdiction for review of the order. Upon notice and hearing, the court may modify or withdraw the order as the court deems appropriate except:

1. A court may not withdraw an order for at least ninety (90) days following the issuance of the order if it is the first such order issued regarding the person named; and

2. A court may not withdraw an order for at least six (6) months following the issuance of the order if it is the second or subsequent such order issued regarding the person named.

If the Department receives written notice from the court of original jurisdiction that it has withdrawn such an order, the Department shall immediately reinstate any driving ~~privileges~~ privilege that ~~have~~ has been canceled or denied under this section, without requiring payment of a reinstatement fee.

F. ~~Any~~ Except as provided in Section 1 of this act, any person who shall knowingly sell, furnish or give alcoholic beverage to a person under twenty-one (21) years of age shall be guilty of a felony, ~~and shall be fined~~ upon conviction, punishable by a fine in an amount not less than Two Thousand Five Hundred Dollars

(\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), ~~or~~ ~~imprisoned~~ imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not more than five (5) years, or by both such fine and imprisonment. The ABLE Commission shall revoke the license of any person holding a license issued pursuant to the Oklahoma Alcoholic Beverage Control Act who is convicted of a violation of this subsection. Any person who sells, furnishes or gives any alcoholic beverage to a person who has induced the prohibited conduct by misrepresentation, false or fraudulent means prohibited by subsection E of this section shall not be prosecuted, except when the person had knowledge or should have known that the age of such person was misrepresented.

G. Any person who shall knowingly sell, furnish or give alcoholic beverage to an insane, mentally deficient, or intoxicated person shall be guilty of a felony, ~~and shall be fined upon conviction punishable by a fine in amount~~ not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), ~~or~~ ~~imprisoned~~ by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not ~~more than one (1) year~~ exceeding two (2) years, or by both such fine and imprisonment.

H. The payment of the special tax required of liquor dealers by the United States by any person within this state without a corresponding state license shall constitute prima facie evidence of an intention to violate the provisions of the Oklahoma Alcoholic Beverage Control Act.

I. Any person operating a cafe, restaurant, club or any place of recreation who permits any person to be drunk or intoxicated in said place of business shall be guilty of a misdemeanor, ~~and shall be fined upon conviction, punishable by a fine in an amount~~ not more than One Hundred Dollars (\$100.00), ~~or imprisoned by imprisonment~~ for a term not ~~more than~~ exceeding thirty (30) days, or by both such fine and imprisonment.

J. Any person selling or keeping a package store open to sell any alcoholic beverage during any day or hours not authorized by the Oklahoma Alcoholic Beverage Control Act shall be guilty of a misdemeanor, upon conviction, punishable by a fine in an amount not more than One Thousand Dollars (\$1,000.00), imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and imprisonment.

SECTION 4. AMENDATORY 47 O.S. 2001, Section 11-903, is amended to read as follows:

Section 11-903. ~~(a)~~ A. When the death of any person ensues within one (1) year as a proximate result of injury received by the driving of any vehicle by any person sixteen (16) years of age or older in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide, upon conviction.

~~(b)~~ B. Any person convicted of negligent homicide shall be punished by imprisonment in the county jail for a term not more than one (1) year or by a fine ~~of~~ in an amount not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

~~(c)~~ C. The Commissioner of Public Safety shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of negligent homicide.

D. Every person who is convicted of any violation of Section 1 of this act where a death ensues as a proximate result of the injury received during any violation of Section 11-902 of this title, shall be guilty of contributory negligent homicide, upon conviction.
Contributory negligent homicide is a felony punishable by imprisonment in the custody of the Department of Corrections for a term not more than ten (10) years, by a fine in an amount not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

SECTION 5. This act shall become effective July 1, 2005.

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

50-1-1057

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