STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 732 By: Bass

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Sections 537 and 598, as amended by Sections 27 and 29, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2004, Sections 537 and 598), which relate to the Oklahoma Alcoholic Beverage Control Act; modifying certain prohibited act; allowing certain employees to be in certain prohibited areas under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 537, as amended by Section 27, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2004, Section 537), is amended to read as follows:

Section 537. A. No person shall:

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

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

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

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

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

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

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

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

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

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

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

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

B. No licensee of the ABLE Commission shall:

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

2. Employ any person under the age of twenty-one (21) in the selling or handling of alcoholic beverages. Provided, that a mixed beverage, beer and wine, caterer, special event or bottle club licensee may employ servers who are at least eighteen (18) years of age~~, except persons under twenty-one (21) years of age~~ who may ~~not~~ serve in designated bar or lounge areas in the performance of the duties of the employee, and a mixed beverage, beer and wine, caterer, special event or bottle club licensee may employ or hire musical bands who have musicians who are under twenty-one (21) years of age if each such musician is either accompanied by a parent or legal guardian or has on their person, to be made available for inspection upon demand by any ABLE Commission officer or law enforcement officer, a written, notarized affidavit from the parent or legal guardian giving the underage musician permission to perform in designated bar or lounge areas;

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

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

a. deliver more than two drinks to one person at one time~~;~~,

b. sell or offer to sell to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public~~;~~,

c. sell or offer to sell to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public~~;~~,

d. sell or offer to sell drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public~~;~~,

e. increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week~~;~~, or

f. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

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

5. Permit or allow any patron or person to exit the licensed premises with an open container of any alcoholic beverage. Provided, that this prohibition shall not be applicable to closed original containers of alcoholic beverages which are carried from

the licensed premises of a bottle club by a patron, closed original wine containers removed from the premises of restaurants, hotels, and motels, or to closed original containers of alcoholic beverages transported to and from the place of business of a licensed caterer by the caterer or an employee of the caterer; or

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

C. No package store licensee shall:

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

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

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

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

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

a. "cash or debit card" means any instrument or device whether known as a debit card or by any other name,

issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility, and

b. "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit which is accepted by over one hundred (100) merchants;

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

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

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

D. No wholesaler licensee shall:

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

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

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

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

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

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

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

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

The prohibition in this subsection against persons under twenty-one (21) years of age entering or remaining within the designated bar area of the licensed premises shall not apply, if the licensed premises are closed to the public during a time the premises are legally permitted to be open for business and the premises are used

for a private party at which alcoholic beverages may be served to persons twenty-one (21) years of age of older. Any alcoholic beverages served at a private party on the licensed premises may be purchased from the licensee at a negotiated price or purchased privately and served at the private party on the licensed premises. Any licensee who desires to conduct such a private party shall notify the ABLE Commission, in writing, at least ten (10) calendar days prior to the private party. The notification shall include the date, time, and purpose of the private party and any other information the ABLE Commission may deem necessary.

F. No bottle club licensee shall:

1. Use or allow the use of any mark or label on a container of alcoholic beverage which does not clearly and precisely indicate the nature of the contents or which might deceive or conceal the nature, composition, quantity, age or quality of any such beverage;

2. Act as an agent for any bottle club member and purchase any alcoholic beverage for the member;

3. Use or allow the use of any pool system of storage or purchase of alcoholic beverages;

4. Allow any person to enter or remain in the designated bar or lounge area of the club unless that person possesses a valid membership card for that club issued by the club;

5. Sell any alcoholic beverage;

6. Deliver or furnish to any club member any alcoholic beverage that does not belong to the member;

7. Serve alcoholic beverages to any person who does not possess a valid membership card for that club issued by the club;

8. Issue a membership card for the club to a person under twenty-one (21) years of age; or

9. Allow any person under twenty-one (21) years of age to enter into, remain within or loiter about the designated bar area of the licensed premises, except for members of a musical band employed or

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

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

G. No special event or caterer licensee shall:

1. Purchase or receive any alcoholic beverage other than from a person holding a wholesaler or Class B wholesaler license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act; provided, a special event or caterer licensee may purchase wine produced at wineries in this state directly from an Oklahoma winemaker as provided in Section 3 of Article XXVIII of the Oklahoma Constitution; or

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

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

SECTION 2. AMENDATORY 37 O.S. 2001, Section 598, as amended by Section 29, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2004, Section 598), is amended to read as follows:

Section 598. A. If the premises of a licensee of the Alcoholic Beverage Laws Enforcement Commission contains a separate or enclosed lounge or bar area, which has as its main purpose the sale or distribution~~,~~ of alcoholic beverages for on-premises consumption, notwithstanding that as an incidental service, meals or short order foods are made available therein, no person under twenty-one (21) years of age shall be admitted to such area, except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537 of this title when the band is to perform within such area, or persons under twenty-one (21) years of age who are on the licensed premises for the limited purpose of performing maintenance, construction, remodeling, painting or other similar services relating to the building or equipment installation, repair or maintenance on the premises during those hours when the licensed establishment is closed for business, or persons who are employed as servers and who are at least eighteen (18) years of age may serve in the designated bar or lounge areas in the performance of the duties of the employee. 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 mixing or serving of said beverages, in which sales or serving of said beverages are incidental to the main purpose, as long as the persons under twenty-one (21) years of age are not sold or served alcoholic beverages. The incidental service of food in the bar area shall not exempt a licensee from the provisions of this section. The ABLE Commission shall have the authority to designate the portions of the premises of a licensee where persons under twenty-one (21) years of age shall not be admitted pursuant to this section. For purposes of this section

only, the term "alcoholic beverages" shall include low-point beer, as defined in Section 163.2 of this title.

B. Except as otherwise provided, an admission charge shall not be considered in any calculation designed to determine the main purpose of an establishment pursuant to subsection A of this section. As used in this section, "admission charge" means any form of consideration received by an establishment from a person in order for that person to gain entrance into the establishment.

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

1. If only persons eighteen (18) years of age or older are permitted to enter the licensed premises; provided, however, if the licensee is claiming an exception from the requirements of subsection B of this section pursuant to this paragraph and fails to restrict the entry by persons under ~~age~~ eighteen (18) years of age into the licensed premises, the ABLE Commission shall designate that only persons twenty-one (21) years of age or older are allowed on 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.

D. The ABLE Commission shall promulgate rules necessary to implement the provisions of this section.

SECTION 3. This act shall become effective November 1, 2005.

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