

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 831

By: Shurden

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2001, Sections 1215 and 1216, which relate to possession of intoxicating beverages by under age person; prohibiting possession of low-point beer by certain persons; increasing specific penalty; amending 37 O.S. 2001, Sections 241, 244 and 246, which relate to selling low-point beer to minors, ground for license revocation; and consumption of low-point beer by minors; prohibiting minor's access to or possession of low-point beer in public or private places; providing exemption for consumption of low-point beer in parent's or legal guardians home under certain supervision and condition; prohibiting license holder from allowing any minor access or possession of low-point beer on premises or adjacent areas; setting penalties for certain offenses; requiring revocation of licenses for certain period of time for certain offenses; clarifying certain exception for consumption of low-point beer; increasing fine and community service hours for minor purchasing or gaining access to low-point beer; including adjacent areas within certain prohibition for minors; increasing penalties for license holder on certain offenses; requiring separate calculation of certain items for certain purpose; exempting certain establishments from certain calculations; deleting provision for certain delinquent child; 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 1215, is amended to read as follows:

Section 1215. It shall be unlawful for any person under the age of twenty-one (21) years to be in the possession of any intoxicating beverage containing more than three and two-tenths percent (3.2%) alcohol by weight or any low-point beer as defined by Section 163.2 of Title 37 of the Oklahoma Statutes while such person is upon any public street, road, or highway or in any public building or place.

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

Section 1216. Any person violating the provisions of Section ~~± 1215~~ of this ~~act~~ title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not to exceed thirty (30) days, or by ~~payment of~~ a fine not to exceed ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

SECTION 3. 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 or to knowingly or willfully allow any person under twenty-one (21) years of age to gain access to or possess or consume any low-point beer in any public or private place. The provisions of this subsection shall not apply to the parent or legal guardian who knowingly and willfully allows their own child to consume low-point beer, as defined in Section 163.2 of this title, in their own home and under their direct supervision; provided, the child is not allowed to thereafter be upon any public street, road or highway or in any public building or place pursuant to the prohibitions in Section 1215 of Title 21 of the Oklahoma Statutes.

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~~ the 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~~ the beverages are incidental to the main purpose, as long as persons under twenty-one (21) years of age are not sold ~~or~~, served ~~said~~ or allowed to gain access to, possess or consume the beverages on the premises; 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 gain access to, possess or consume any low-point beer on the licensed premises or to knowingly or willfully allow any person under twenty-one (21) years of age to gain access to, possess or consume any low-point beer on any adjacent areas owned or leased by such licensed establishment including, but not limited to, parking areas or grounds.

D. Any person violating the provisions ~~of subsection A, B or C~~ of this section shall upon conviction be guilty of a misdemeanor for a first violation and shall be punished by a fine of One Thousand Dollars (\$1,000.00) and shall be subject to license revocation as provided in Section 244 of this title. Any person convicted of a second violation within six (6) months of the first violation shall be punished by a fine of Five Thousand Dollars (\$5,000.00) and shall have such license revoked for three (3) years, notwithstanding the provisions of Section 244 of this title.

SECTION 4. 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 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 revocation by the judge of the

district court of any permit held by such person authorizing the sale of low-point beer. The ~~permit~~ revocation period shall be ~~revoked~~ twelve (12) months if the person is convicted of a first violation of the provisions of Section 241 or 243 of this title after a prior and three (3) years for any second or subsequent 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 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 when the conviction is within twelve (12) months of any prior conviction.~~

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 5. 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, except under the direct supervision of their parent or legal guardian in their own home. It shall be unlawful for any person under twenty-one (21) years of age to purchase or attempt to purchase or gain access to 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)~~ Five Hundred Dollars (\$500.00) or by appropriate community service not to exceed ~~twenty (20)~~ eighty (80) 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~~ allowed to gain access to, possess or consume low-point beer anywhere on the premises or the adjacent areas owned or leased by the licensed establishment; 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)~~ One Thousand Dollars (\$1,000.00) for a first offense. Any person convicted of a second violation within six (6) months of the first violation shall be punishable by a fine of Five Thousand Dollars (\$5,000.00) and shall have such license revoked for three (3) years.

C. ~~Except as otherwise provided, an admission charge shall not~~
The following shall be considered separately in any calculation

designed to determine the main purpose of an area pursuant to subsection B of this section:

1. Sale of low-point beer, as defined by Section 163.2 of this title;

2. Sale of food and beverages, except low-point beer or other alcoholic beverages;

3. Sale of alcoholic beverages containing more than three and two-tenth percent (3.2%) alcohol by weight;

4. Sale of any tobacco products; and

5. Sale of all other products or services and income from any other purpose of the establishment, excluding any admission charge.

An admission charge shall not be considered in any calculation 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 if only persons ~~eighteen (18)~~ twenty-one (21) 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 6. This act shall become effective July 1, 2005.

SECTION 7. 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.

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