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**05/16/2011 01:00:56 PM**

HOUSE OF REPRESENTATIVES  
2<sup>nd</sup> CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB1211**

By: Kirby of the House and Newberry of the Senate

Title: Intoxicating liquors; underage drinking; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Amendments No. 1 and 2; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**HOUSE CONFEREES**

Jordan Fred Jordan

Martin (Steve) Steve Martin

McCullough McCullough

Moore J. H. Moore

Morrisette Richard Morrisette

Roan Paul D. Roan

Roberts (Dustin) \_\_\_\_\_

Schwartz Colby Schwartz

Sherrer Ben Sherrer

Sullivan Alan Sullivan

Tibbs Steve Tibbs

Wesselhoft \_\_\_\_\_

Williams \_\_\_\_\_

HB1211 CCR2 B

**SENATE CONFEREES**

Newberry

Barrington

Treat

Brecheen

Burrage

Eason McIntyre

Handwritten signatures of Senate conferees over horizontal lines. The signatures are: Newberry (top), Barrington, Treat, Brecheen, Burrage, and Eason McIntyre (bottom). The signature for Eason McIntyre is partially obscured by the line below it.

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 2ND CONFERENCE COMMITTEE

4 SUBSTITUTE

5 FOR ENGROSSED

6 HOUSE BILL NO. 1211

By: Kirby, Steele, Osborn,  
Wright, Holland, Faught,  
Kern, Ortega, Nollan,  
Tibbs, Russ, Thomsen and  
Brumbaugh of the House

7 and

8 Newberry, Simpson, David,  
9 Shortey and Brinkley of the  
10 Senate

11  
12  
13 2ND CONFERENCE COMMITTEE SUBSTITUTE

14 An Act relating to intoxicating liquors; creating  
15 Cody's Law; amending Section 1, Chapter 312, O.S.L.  
16 2006, as amended by Section 2, Chapter 365, O.S.L.  
17 2007 (37 O.S. Supp. 2010, Section 8.2), which relates  
18 to underage drinking; modifying underage drinking  
19 prohibition; modifying punishment; amending 37 O.S.  
20 2001, Sections 241, as amended by Section 8, Chapter  
21 61, O.S.L. 2006 and 246, as amended by Section 10,  
22 Chapter 61, O.S.L. 2006 (37 O.S. Supp. 2010, Sections  
23 241 and 246), which relate to low-point beer;  
24 allowing municipalities to enact and enforce  
ordinances subject to certain limitations; providing  
for noncodification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law not to be  
2 codified in the Oklahoma Statutes reads as follows:

3 This act shall be known and may be cited as "Cody's Law".

4 SECTION 2. AMENDATORY Section 1, Chapter 312, O.S.L.  
5 2006, as amended by Section 2, Chapter 365, O.S.L. 2007 (37 O.S.  
6 Supp. 2010, Section 8.2), is amended to read as follows:

7 Section 8.2 A. No person shall knowingly and willfully permit  
8 any individual under twenty-one (21) years of age who is an invitee  
9 to the person's residence, any building, structure, or room owned,  
10 occupied, leased or otherwise procured by the person or on any land  
11 owned, occupied, leased or otherwise procured by the person, to  
12 possess or consume any alcoholic beverage as defined by Section 506  
13 of ~~Title 37 of the Oklahoma Statutes~~ this title, any low-point beer  
14 as defined by Section 163.2 of this title, any controlled dangerous  
15 substance as defined in the Uniform Controlled Dangerous Substances  
16 Act, or any combination thereof, in such place.

17 B. Except as provided for in subsection C of this section,  
18 punishment for violation of this section shall be as follows:

19 1. Any person who is convicted of a violation of the provisions  
20 of this section shall be deemed guilty of a misdemeanor for the  
21 first offense and be punished by a fine of not more than Five  
22 Hundred Dollars (\$500.00);

23 2. Any person who, within ten (10) years after previous  
24 convictions of a violation:

1           a. of this section, or

2           b. of the provisions of any law of another state

3           prohibiting the offense provided for in subsection A

4           of this section, or

5           c. in a municipal criminal court of record for the

6           violation of a municipal ordinance prohibiting the

7           offense provided for in subsection A of this section,

8 shall be guilty of a misdemeanor and shall be punished by a fine of

9 not more than One Thousand Dollars (\$1,000.00);

10           3. Any person who, within ten (10) years after two or more

11 previous convictions of a violation:

12           a. of this section, or

13           b. of the provisions of any law of another state

14           prohibiting the offense provided for in subsection A

15           of this section, or

16           c. in a municipal criminal court of record for the

17           violation of a municipal ordinance prohibiting the

18           offense provided for in subsection A of this section,

19           or

20           d. or any combination of two or more thereof,

21 shall be guilty of a felony and shall be punished by a fine of not

22 more than Two Thousand Five Hundred Dollars (\$2,500.00), or by

23 imprisonment in the custody of the Department of Corrections for not

24 more than five (5) years, or by both such fine and imprisonment.

1        C. Any person who violates this section, and such actions cause  
2 great bodily injury or the death of a person, shall, in addition to  
3 any other penalty provided by law, be guilty of a felony, punishable  
4 by imprisonment in the custody of the Department of Corrections for  
5 not more than five (5) years, a fine of not less than Two Thousand  
6 Five Hundred Dollars (\$2,500.00) nor more than Five Thousand Dollars  
7 (\$5,000.00), or both such fine and imprisonment.

8        SECTION 3.        AMENDATORY        37 O.S. 2001, Section 241, as  
9 amended by Section 8, Chapter 61, O.S.L. 2006 (37 O.S. Supp. 2010,  
10 Section 241), is amended to read as follows:

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

14        B. It shall be unlawful for any person who holds a license to  
15 sell and dispense low-point beer for consumption on the premises, or  
16 any agent, servant, or employee of said license holder, to permit  
17 any person under twenty-one (21) years of age to be admitted to or  
18 remain in a separate or enclosed bar area of the licensed premises,  
19 which has as its main purpose the selling or serving of low-point  
20 beer for consumption on the premises. The provisions of this  
21 section shall not prohibit persons under twenty-one (21) years of  
22 age from being admitted to an area which has as its main purpose  
23 some objective other than the sale or serving of low-point beer, in  
24 which sales or serving of said beverages are incidental to the main

1 purpose, as long as persons under twenty-one (21) years of age are  
2 not sold or served said beverages; however, the incidental service  
3 of food in the bar area shall not exempt a licensee, agent, servant,  
4 or employee from the provisions of this section.

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

10 D. Any person violating the provisions of subsection A, B or C  
11 of this section shall upon conviction be guilty of a misdemeanor for  
12 a first violation and shall be punished by a fine of not more than  
13 Five Hundred Dollars (\$500.00), or imprisoned in the county jail for  
14 not more than one (1) year, or by both such fine and imprisonment.  
15 Any person convicted of a second violation within one (1) year of  
16 the first violation shall be guilty of a misdemeanor and shall be  
17 punished by a fine of not more than Two Thousand Five Hundred  
18 Dollars (\$2,500.00), or imprisoned in the county jail for not more  
19 than one (1) year, or by both such fine and imprisonment. Any  
20 person convicted of a third violation within one (1) year of the  
21 first violation shall be guilty of a felony and shall be punished by  
22 a fine of not more than Five Thousand Dollars (\$5,000.00), or by  
23 imprisonment in the custody of the Department of Corrections for not  
24 more than five (5) years, or by both such fine and imprisonment.

1 The filing of a supplemental information shall be subject to the  
2 discretion of the district attorney. One-half (1/2) of any fine  
3 collected shall be deposited in the Prevention of Youth Access to  
4 Alcohol Revolving Fund established by Section ~~13~~ 608 of this ~~act~~  
5 title.

6 E. That the person demanded, was shown, and reasonably relied  
7 upon proof of age shall be a rebuttable presumption to any action  
8 brought pursuant to this section. A person cited for violating this  
9 section shall be deemed to have reasonably relied upon proof of age,  
10 and such person shall not be found guilty of such violation if:

11 1. The individual who purchased or received the low-point beer  
12 presented what a reasonable person would have believed was a driver  
13 license or other government-issued photo identification purporting  
14 to establish that the individual was twenty-one (21) years of age or  
15 older; or

16 2. The person cited for the violation confirmed the validity of  
17 the driver license or other government-issued photo identification  
18 presented by the individual by performing a transaction scan by  
19 means of a transaction scan device.

20 Provided, that this defense shall not relieve from liability any  
21 person cited for a violation of this section if such person failed  
22 to exercise reasonable diligence to determine whether the physical  
23 description and picture on the driver license or other government-  
24 issued photo identification was that of the individual who presented

1 it. The availability of the defense described in this subsection  
2 does not affect the availability of any other defense under any  
3 other provision of law.

4 F. Upon violation of any of the provisions of this section by  
5 any agent, servant, or employee, the law enforcement agency shall  
6 notify the owner of the premises of the violation, the Oklahoma Tax  
7 Commission, and the district court clerk of the county in which the  
8 premises are located. For purposes of this subsection, notification  
9 to the owner of the premises shall be deemed given if the law  
10 enforcement agency mails, by mail with delivery confirmation, the  
11 notification to the address which is on file with the Oklahoma Tax  
12 Commission of the owner of the location at which the violation  
13 occurred and the law enforcement agency received delivery  
14 confirmation from the United States Postal Service.

15 G. Cities and towns may enact and municipal police officers may  
16 enforce ordinances prohibiting and penalizing conduct under the  
17 provisions of this section, but the provisions of the municipal  
18 ordinances shall be the same as provided for in this section, and  
19 the penalty provisions under such ordinances shall not be more  
20 stringent than those of this section and shall be limited to the  
21 provisions of Section 14-111 of Title 11 of the Oklahoma Statutes.

22 SECTION 4. AMENDATORY 37 O.S. 2001, Section 246, as  
23 amended by Section 10, Chapter 61, O.S.L. 2006 (37 O.S. Supp. 2010,  
24 Section 246), is amended to read as follows:

1 Section 246. A. No person under twenty-one (21) years of age  
2 shall consume or possess with the intent to consume low-point beer,  
3 as defined in Section 163.2 of this title. It shall be unlawful for  
4 any person under twenty-one (21) years of age to purchase or attempt  
5 to purchase low-point beer, as defined in Section 163.2 of this  
6 title, except under supervision of law enforcement officers. Any  
7 person violating any of the provisions of this subsection shall be  
8 guilty, upon conviction, of a misdemeanor and punished by a fine not  
9 to exceed Three Hundred Dollars (\$300.00) or ordered to perform  
10 community service not to exceed thirty (30) hours, or both such fine  
11 and community service. In addition, if the person has an Oklahoma  
12 driver license issued by the Department of Public Safety, that  
13 license shall be revoked for the period of time provided in Section  
14 6-107.1 of Title 47 of the Oklahoma Statutes. If the person does  
15 not have an Oklahoma driver license, the person shall be ineligible  
16 to obtain an Oklahoma driver license for the period of time provided  
17 in Section 6-107.1 of Title 47 of the Oklahoma Statutes. For a  
18 second offense, any person who is convicted of violating the  
19 provisions of this subsection shall be guilty of a misdemeanor and  
20 punished by a fine of not to exceed Six Hundred Dollars (\$600.00) or  
21 ordered to perform community service not to exceed sixty (60) hours  
22 or both such fine and community service. In addition, if the person  
23 has an Oklahoma driver license issued by the Department of Public  
24 Safety, that license shall be revoked for the period of time

1 provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes.  
2 If the person does not have an Oklahoma driver license, the person  
3 shall be ineligible to obtain an Oklahoma driver license for the  
4 period of time provided in Section 6-107.1 of Title 47 of the  
5 Oklahoma Statutes. For a third offense, any person who is convicted  
6 of violating the provisions of this subsection shall be guilty of a  
7 misdemeanor and punished by a fine of not to exceed Nine Hundred  
8 Dollars (\$900.00) or ordered to perform community service not to  
9 exceed ninety (90) hours or both such fine and community service.  
10 In addition, if the person has an Oklahoma driver license issued by  
11 the Department of Public Safety, that license shall be revoked for  
12 the period of time provided in Section 6-107.1 of Title 47 of the  
13 Oklahoma Statutes. If the person does not have an Oklahoma driver  
14 license, the person shall be ineligible to obtain an Oklahoma driver  
15 license for the period of time provided in Section 6-107.1 of Title  
16 47 of the Oklahoma Statutes. Provided, the provisions of this  
17 subsection shall not apply when such persons are under the direct  
18 supervision of their parent or guardian, but in no instance shall  
19 this exception be interpreted to allow such persons to consume such  
20 beverages in any place licensed to dispense low-point beer as  
21 provided in Section 163.11 of this title.

22 In addition to any penalty or condition imposed pursuant to the  
23 provisions of this subsection, the person shall be subject to an  
24 assessment of the person's degree of alcohol abuse, in the same

1 manner as prescribed in subsection G of Section 11-902 of Title 47  
2 of the Oklahoma Statutes, which may result in treatment as deemed  
3 appropriate by the court.

4 B. If the premises of a holder of a license to sell low-point  
5 beer contains a separate or enclosed bar area which has as its main  
6 purpose the sale or serving of low-point beer for consumption on the  
7 premises, no person under twenty-one (21) years of age shall enter,  
8 attempt to enter, or remain in said area. The provisions of this  
9 subsection shall not prohibit persons under twenty-one (21) years of  
10 age from entering or remaining in an area which has as its main  
11 purpose some objective other than the sale or serving of low-point  
12 beer, in which sales or serving of said beverages are incidental to  
13 the main purpose, if the persons under twenty-one (21) years of age  
14 are not sold or served or do not consume low-point beer anywhere on  
15 the premises; however, the incidental service of food in the bar  
16 area shall not exempt persons under twenty-one (21) years of age  
17 from the provisions of this subsection. Any person convicted of  
18 violating the provisions of this subsection shall be guilty of a  
19 misdemeanor and punished by a fine not to exceed One Hundred Dollars  
20 (\$100.00).

21 In addition, if the person has an Oklahoma driver license issued  
22 by the Department of Public Safety, that license shall be revoked  
23 for the period of time provided in Section 6-107.1 of Title 47 of  
24 the Oklahoma Statutes. If the person does not have an Oklahoma

1 driver license, the person shall be ineligible to obtain an Oklahoma  
2 driver license for the period of time provided in Section 6-107.1 of  
3 Title 47 of the Oklahoma Statutes.

4 C. Except as otherwise provided, an admission charge shall not  
5 be considered in any calculation designed to determine the main  
6 purpose of an area pursuant to subsection B of this section. For  
7 purposes of this section, an "admission charge" shall mean any form  
8 of consideration received by an establishment from a person in order  
9 for that person to gain entry into the establishment or an area  
10 thereof.

11 D. The provisions of subsection C of this section shall not  
12 apply:

13 1. If only persons eighteen (18) years of age or older are  
14 permitted to enter the licensed premises;

15 2. If the licensed premises are owned or operated by a service  
16 organization or fraternal establishment which is exempt under  
17 Section 501(c)(19), (8), or (10) of the Internal Revenue Code; or

18 3. To a public event held in a facility owned or operated by  
19 any agency, political subdivision or public trust of this state.

20 E. A violation of the provisions of this section shall not be a  
21 basis for instituting juvenile proceedings to determine if a person  
22 under eighteen (18) years of age is a delinquent child; however, if  
23 a person under eighteen (18) years of age habitually violates the  
24 provisions of this section, juvenile proceedings may be brought to

1 determine if the person is a delinquent child. A person under  
2 eighteen (18) years of age who has been convicted of violating the  
3 provisions of this section shall be subject to the penalty  
4 provisions provided in this section.

5 F. Cities and towns may enact and municipal police officers may  
6 enforce ordinances prohibiting and penalizing conduct under the  
7 provisions of this section, but the provisions of the municipal  
8 ordinances shall be the same as provided for in this section, and  
9 the penalty provisions under such ordinances shall not be more  
10 stringent than those of this section and shall be limited to the  
11 provisions of Section 14-111 of Title 11 of the Oklahoma Statutes.

12 SECTION 5. This act shall become effective November 1, 2011.

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14 53-1-7793 CJB 05/13/11

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