STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL 3100 By: Williams

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 2011, Sections 241 and 537, which relate to prohibited acts; prohibiting sale of low-point beer and alcoholic beverages during certain time period; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2011, 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, 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 <u>if:</u>

<u>1. The person is under twenty-one (21) years of age; or</u>

<u>2. It is the date of the twenty-first birthday of the person or before 7 a.m. the day following the twenty-first birthday of the person</u>.

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 not more than Five Hundred Dollars ($500.00), or imprisoned in the county jail for not more than one (1) year, or by both such fine and imprisonment. Any person convicted of a second violation within one (1) year of

the first violation shall be guilty of a misdemeanor and shall be punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or imprisoned in the county jail for not more than one (1) year, or by both such fine and imprisonment. Any person convicted of a third violation within one (1) year of the first violation shall be guilty of a felony and shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment in the custody of the Department of Corrections for not more than five (5) years, or by both such fine and imprisonment. The filing of a supplemental information shall be subject to the discretion of the district attorney. One-half (1/2) of any fine collected shall be deposited in the Prevention of Youth Access to Alcohol Revolving Fund established by Section 608 of this title.

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

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

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

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

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

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

SECTION 2. AMENDATORY 37 O.S. 2011, 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; provided, this prohibition shall not apply to the first one hundred eighty (180) liters of alcoholic beverages classified as household goods by military personnel, age twenty-one (21) or older when entering Oklahoma from temporary active assignment outside the contiguous United States;

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 may not serve in designated bar or lounge areas, 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 New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day or Christmas Day. Package store licensees shall be permitted to sell, or keep package store premises open for the purpose of selling, alcoholic beverages on the day of any General, Primary, Runoff Primary or Special Election whether on a national,

state, county or city election, provided that the election day does not occur on any day on which such sales are otherwise prohibited by law;

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 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, 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 persons who incidentally pass through the designated area; or

6. Knowingly sell, deliver, or furnish alcoholic beverages to a person on the date of the twenty-first birthday of the person or

before 7 a.m. the day following the twenty-first birthday of the person.

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; or

10. Knowingly sell, deliver, or furnish alcoholic beverages to a person on the date of the twenty-first birthday of the person or before 7 a.m. the day following the twenty-first birthday of the person.

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 3. This act shall become effective November 1, 2012.

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