

An Act

ENROLLED HOUSE
BILL NO. 1211

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

and

Newberry, Simpson, David,
Shortey and Brinkley of the
Senate

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

SUBJECT: Intoxicating liquors

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

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

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

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

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

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

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

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

a. of this section, or

b. of the provisions of any law of another state prohibiting the offense provided for in subsection A of this section, or

c. in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section,

shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00);

3. Any person who, within ten (10) years after two or more previous convictions of a violation:

a. of this section, or

- b. of the provisions of any law of another state prohibiting the offense provided for in subsection A of this section, or
- c. in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section, or
- d. or any combination of two or more thereof,

shall be guilty of a felony and shall be punished by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), 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.

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

SECTION 3. AMENDATORY 37 O.S. 2001, Section 241, as amended by Section 8, Chapter 61, O.S.L. 2006 (37 O.S. Supp. 2010, 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.

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 ~~13~~ 608 of this ~~act~~ 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 4. AMENDATORY 37 O.S. 2001, Section 246, as amended by Section 10, Chapter 61, O.S.L. 2006 (37 O.S. Supp. 2010, 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. It shall be unlawful for any person under twenty-one (21) years of age to purchase or attempt to purchase 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 subsection shall be guilty, upon conviction, of a misdemeanor and punished by a fine not to exceed Three Hundred Dollars (\$300.00) or ordered to perform

community service not to exceed thirty (30) hours, or both such fine and community service. In addition, if the person has an Oklahoma driver license issued by the Department of Public Safety, that license shall be revoked for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. If the person does not have an Oklahoma driver license, the person shall be ineligible to obtain an Oklahoma driver license for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. For a second offense, any person who is convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and punished by a fine of not to exceed Six Hundred Dollars (\$600.00) or ordered to perform community service not to exceed sixty (60) hours or both such fine and community service. In addition, if the person has an Oklahoma driver license issued by the Department of Public Safety, that license shall be revoked for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. If the person does not have an Oklahoma driver license, the person shall be ineligible to obtain an Oklahoma driver license for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. For a third offense, any person who is convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and punished by a fine of not to exceed Nine Hundred Dollars (\$900.00) or ordered to perform community service not to exceed ninety (90) hours or both such fine and community service. In addition, if the person has an Oklahoma driver license issued by the Department of Public Safety, that license shall be revoked for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. If the person does not have an Oklahoma driver license, the person shall be ineligible to obtain an Oklahoma driver license for the period of time provided in Section 6-107.1 of Title 47 of the Oklahoma Statutes. Provided, the provisions of this subsection 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.

In addition to any penalty or condition imposed pursuant to the provisions of this subsection, the person shall be subject to an assessment of the person's degree of alcohol abuse, in the same manner as prescribed in subsection G of Section 11-902 of Title 47 of the Oklahoma Statutes, which may result in treatment as deemed appropriate by the court.

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 consume low-point beer anywhere on the premises; 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).

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

C. Except as otherwise provided, an admission charge shall not be considered in any calculation designed 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 only persons eighteen (18) 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.

F. 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 5. This act shall become effective November 1, 2011.

Passed the House of Representatives the 17th day of May, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 18th day of May, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____