

CHAPTER 285

S.B. No. 21

An Act relating to compliance with federal highway legislation by revising alcoholic beverage regulations relating to age; amending the Alcoholic Beverage Code by amending Sections 39.31, 40.05, 106.01, and 109.53 and Subsection (a), Section 11.46; Subsection (a), Section 61.42; Subsection (a), Section 61.71; Subsection (a), Section 61.74; Subsection (b), Section 106.03; Subsection (a), Section 106.07; Subsection (a), Section 106.12; and Subsection (a), Section 107.07.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The purpose of this Act is to avoid the imposition of sanctions against the state and loss of federal highway funds pursuant to certain of the provisions of Public Law 98-363 passed by the 98th Congress, 2d Session (1984), and as set out in 23 United States Code Section 158 by raising the minimum age for the purchase and public possession of liquor and beer.

SECTION 2. Subsection (a), Section 11.46, Alcoholic Beverage Code, is amended to read as follows:

“(a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

“(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

“(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

“(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

“(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

“(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

“(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

“(7) the applicant is a *minor* [~~less than 19 years of age~~];

“(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

“(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

“(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

“(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

“(12) the applicant does not have an adequate building available at the address for which the permit is sought;

“(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

“(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

“(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.”

SECTION 3. Section 39.31, Alcoholic Beverage Code, is amended to read as follows:

“Section 39.31. SALES TO MINORS. No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a *minor* [~~person under 19 years of age~~] unless that minor presents with his prescription the written consent of his parent or guardian. The person making the sale shall file the written consent with the prescription.”

SECTION 4. Section 40.05, Alcoholic Beverage Code, is amended to read as follows:

“Section 40.05. PROHIBITED ACTIVITIES. No physician may:

“(1) prescribe liquor for any purpose unless he holds a physician's permit;

“(2) prescribe liquor for other than medicinal purposes;

“(3) issue prescriptions for liquor to any person without first making a physical examination of the patient to determine the disease or ailment afflicting him;

“(4) issue a prescription which does not contain all the information required by this chapter written in the English language;

“(5) accept any sort of compensation or guarantee as to income or material benefit from a holder of a medicinal permit for writing a prescription;

“(6) prescribe more than one pint of liquor for a person in any one day;

“(7) prescribe liquor for any person showing evidence of intoxication;

“(8) prescribe liquor for any person under any name other than the true name of the person for whom the liquor is intended;

“(9) prescribe liquor for any *minor* [~~person under the age of 19 years~~] unless he has the written consent of the *minor's* [~~person's~~] parent or guardian;

“(10) issue more than 100 prescriptions for liquor in any period of 90 days, beginning from the date designated by the physician in any order for prescription forms placed with the commission;

“(11) fail or refuse to make and keep for a period of two years any record of prescriptions issued for liquor as required by the commission;

“(12) fail to make reports required by the commission; or

“(13) fail to divulge information or produce records of the issuance of prescriptions when requested to do so by a representative of the commission or by any peace officer or any county or district attorney.”

SECTION 5. Subsection (a), Section 61.42, Alcoholic Beverage Code, is amended to read as follows:

“(a) The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

“(1) the applicant is a *minor* [~~under 19 years of age~~];

“(2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;

“(3) the place or manner in which the applicant for a retail dealer’s license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

“(4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;

“(5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;

“(6) the applicant was finally convicted of a felony during the two years immediately preceding the filing of his application;

“(7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

“(8) as to a corporation, it is not incorporated under the laws of this state, or at least 51 percent of the corporate stock is not owned at all times by persons who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor’s license which was in effect on January 1, 1953, or to an applicant for a beer retailer’s on-premise license for a railway car.”

SECTION 6. Subsection (a), Section 61.71, Alcoholic Beverage Code, is amended to read as follows:

“(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer’s on- or off-premise license if it is found, after notice and hearing, that the licensee:

“(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

“(2) was finally convicted for violating a penal provision of this code;

“(3) was finally convicted of a felony while holding an original or renewal license;

“(4) made a false statement or a misrepresentation in his original application or a renewal application;

“(5) knowingly sold, served, or delivered beer to a *minor* [~~person under 19 years of age~~];

“(6) sold, served, or delivered beer to a person showing evidence of intoxication;

“(7) sold, served, or delivered beer at a time when its sale is prohibited;

“(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

“(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

“(10) does not have at his licensed premises running water, if it is available, and separate toilets for both sexes which are properly identified;

“(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

“(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

“(13) conspired with a person to violate Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of these sections or rules;

“(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

“(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

“(16) maintained blinds or barriers at his place of business in violation of this code;

“(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

“(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

“(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer’s or distributor’s license;

“(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

“(21) owned an interest of any kind in the business or premises of the holder of a distributor’s license;

“(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

“(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

“(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

“(25) imported beer into this state except as authorized by Section 107.07 of this code;

“(26) occupied premises in which the holder of a manufacturer’s or distributor’s license had an interest of any kind;

“(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

“(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

“(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

“(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code.”

SECTION 7. Subsection (a), Section 61.74, Alcoholic Beverage Code, is amended to read as follows:

“(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor’s license if it is found, after notice and hearing, that the licensee:

“(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

“(2) was finally convicted for violating a penal provision of this code;

“(3) was finally convicted of a felony while holding an original or renewal license;

“(4) violated Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

“(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

“(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

“(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

“(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

“(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

“(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

“(11) made a false or misleading representation or statement in his original application or a renewal application;

“(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

“(13) misrepresented any beer sold by him to a retailer or to the public;

“(14) knowingly sold or delivered beer to a *minor* [~~person under 19 years of age~~]; or

“(15) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufacturer other than the brand or trade name of the manufacturer shown on the container.”

SECTION 8. Section 106.01, Alcoholic Beverage Code, is amended to read as follows:

“Section 106.01. DEFINITION. In this code, ‘minor’ means a person under 21 [~~19~~] years of age.”

SECTION 9. Subsection (b), Section 106.03, Alcoholic Beverage Code, is amended to read as follows:

“(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 [~~19~~] years old or older by displaying an apparently valid Texas driver’s license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.”

SECTION 10. Subsection (a), Section 106.07, Alcoholic Beverage Code, is amended to read as follows:

“(a) A minor commits an offense if he falsely states that he is 21 [~~19~~] years of age or older or presents any document that indicates he is 21 [~~19~~] years of age or older to a person engaged in selling or serving alcoholic beverages.”

SECTION 11. Subsection (a), Section 106.12, Alcoholic Beverage Code, is amended to read as follows:

“(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 21 [~~19~~] years, may apply to the court in which he was convicted to have the conviction expunged.”

SECTION 12. Subsection (a), Section 107.07, Alcoholic Beverage Code, is amended to read as follows:

“(a) A Texas resident may import not more than one quart of liquor for his own personal use without being required to hold a permit. A Texas resident may import for his own personal use not more than three gallons of wine without being required to hold a permit. A nonresident of Texas may import not more than a gallon of liquor for his own personal use without being required to hold a permit. A person importing liquor into the state under this subsection must pay the state tax on liquor and affix the required tax stamps. No *minor* [~~person under the age of 19 years~~] and no intoxicated person may import any liquor into the state. A person importing wine or liquor under this subsection must personally accompany the wine or liquor as it enters the state. A person may not avail himself of the exemptions set forth in this subsection more than once every thirty days.”

SECTION 13. Section 109.53, Alcoholic Beverage Code, is amended to read as follows:

“Section 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES; SUBTERFUGE OWNERSHIP; ETC. No person who has not been a citizen of Texas for a period of three years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this code. No permit except a brewer’s permit, and such other licenses and permits as are necessary to the operation of a brewer’s permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent’s, industrial, medicinal and carrier’s permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge

ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall have authority to designate as 'premise' and the commission or administrator shall not approve a lesser area than that specifically defined as 'premise' in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No *minor* [~~person under the age of 19 years~~], unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. The prohibition against the presence of a *minor* [~~person under the age of 19 years~~] on the premises of the holder of a package store permit does not apply to the presence on the premises of the holder or a person lawfully employed by the holder. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provision prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code."

SECTION 14. The changes in the minimum age made by the preceding sections of this Act do not affect the eligibility of a person who holds a license or permit on the effective date of the preceding sections of this Act to continue to hold and renew the license or permit and to continue to engage in the activities authorized by the license or permit.

SECTION 15. (a) If the attorney general finds that Public Law 98-363 as it relates to the imposition of sanctions against a state involving federal highway funds for failing to increase the age at which persons may purchase or consume alcoholic beverages is repealed, has expired, is suspended, or the enforcement of it has for any reason been enjoined or if the attorney general finds that a United States court of appeals or the United States Supreme Court has entered a final order holding that the federal law, to the extent it has the described effect, or a rule implementing it is unconstitutional or otherwise invalid in whole or in part or if the attorney general finds that another Act of Congress has the effect of abrogating the sanctions imposed by Public Law 98-363, the attorney general shall file a certificate of that fact with the secretary of state. The secretary shall publish the certificate in the Texas Register.

(b) The preceding sections of this Act take effect September 1, 1986, except that if before that date the attorney general has filed with the secretary of state a certificate finding the existence of one of the facts specified in Subsection (a) of this section, the effective date of the preceding sections of this Act is delayed until the 30th day after the date on which the attorney general files another certificate with the secretary of state stating that none of the facts specified in Subsection (a) of this section exists. The secretary shall publish the certificate in the Texas Register.

(c) If, after the preceding sections of this Act have taken effect, the attorney general files with the secretary of state a certificate finding that one of the facts specified in Subsection (a) of this section exists, then effective on the date specified in Subsection (d) of this section the following sections of the Alcoholic Beverage Code are amended as follows:

(1) Section 106.01, Alcoholic Beverage Code, is amended to read as follows:

"Section 106.01. DEFINITION. In this code, 'minor' means a person under 19 [21] years of age."

(2) Subsection (b), Section 106.03, Alcoholic Beverage Code, is amended to read as follows:

"(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 19 [21] years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage."

(3) Subsection (a), Section 106.07, Alcoholic Beverage Code, is amended to read as follows:

"(a) A minor commits an offense if he falsely states that he is 19 [21] years of age or older or presents any document that indicates he is 19 [21] years of age or older to a person engaged in selling or serving alcoholic beverages."

(4) Subsection (a), Section 106.12, Alcoholic Beverage Code, is amended to read as follows:

"(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 19 [21] years, may apply to the court in which he was convicted to have the conviction expunged."

(d) The contingency described in Subsection (c) of this section takes effect as follows:

- (1) if the certificate is filed at a time when the legislature is not convened in regular session, the effective date is June 15 immediately after the next regular session of the legislature; and
- (2) if the certificate is filed while the legislature is convened in regular session, the effective date is June 15 immediately after final adjournment of that regular session.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on February 6, 1985, by a viva-voce vote; Senate concurred in House amendment on May 27, 1985, by the following vote: Yeas 30, Nays 1; passed the House, with amendment, on May 21, 1985, by the following vote: Yeas 141, Nays 2, two present not voting.

Approved: June 6, 1985

Effective: September 1, 1986, except as provided in Section 15.