

Enrolled House Bill 2246

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Liquor Control Commission)

CHAPTER

AN ACT

Relating to the consumption of alcoholic liquor by underage persons; creating new provisions; and amending ORS 471.410.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 471.410 is amended to read:

471.410. (1) *[No person shall]* **A person may not** sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian shall sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. **A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian.** A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3)(a) *[No]* **A person** who exercises control over private real property may **not** knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property. *[The prohibitions of]*

(b) This subsection: *[apply]*

(A) **Applies** only to a person who is present and in control of the location at the time the consumption occurs; *[The prohibitions of This subsection do]*

(B) **Does** not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.; **and**

(C) **Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.**

(4) **This section does not apply to sacramental wine given or provided as part of a religious rite or service.**

[(4)] (5) A person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of \$350.

(b) Upon a second conviction, a fine of \$1,000.

(c) Upon a third or subsequent conviction, a fine of \$1,000 and not less than 30 days of imprisonment.

[(5)] (6) The court [shall] **may** not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection [(4)] (5) of this section. In addition to the mandatory sentence the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

[(6)] (7) The mandatory minimum penalty provisions of subsection [(4)] (5) of this section [shall] **do** not apply to persons licensed or appointed under the provisions of this chapter.

[(7)] (8) A person who violates subsection (3) of this section commits a violation. Upon violation of subsection (3) of this section, the court shall impose at least a mandatory minimum fine as follows:

(a) Upon a first conviction, a fine of \$350.

(b) Upon a second or subsequent conviction, a fine of \$1,000.

[(8)] (9) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor.

SECTION 2. The amendments to ORS 471.410 by section 1 of this 2009 Act apply to:

(1) **The selling, giving or making available of alcoholic liquor on or after the effective date of this 2009 Act for the purpose of enabling a person under the age of 21 years to possess the alcoholic liquor; and**

(2) **A person exercising control over private property at which a person under the age of 21 years consumes alcoholic liquor on or after the effective date of this 2009 Act.**

SECTION 3. If Senate Bill 227 becomes law, section 1 of this 2009 Act (amending ORS 471.410) is repealed and ORS 471.410, as amended by section 1, chapter __, Oregon Laws 2009 (Enrolled Senate Bill 227), is amended to read:

471.410. (1) [No person shall] **A person may not** sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian shall sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. **A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian.** A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3)(a) [No] **A person who exercises control over private real property may not** knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property. [The prohibitions of]

(b) This subsection: [apply]

(A) **Applies** only to a person who is present and in control of the location at the time the consumption occurs;[. The prohibitions of this subsection do]

(B) **Does** not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides[.]; **and**

(C) **Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.**

(4) **This section does not apply to sacramental wine given or provided as part of a religious rite or service.**

[(4)] (5) A person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Except as provided in subsection [(5)] (6) of this section, upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

- (a) Upon a first conviction, a fine of at least \$500.
- (b) Upon a second conviction, a fine of at least \$1,000.
- (c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

[(5)] (6) The mandatory minimum penalty provisions of subsection [(4)] (5) of this section do not apply to persons licensed under the provisions of this chapter, to an agent appointed under ORS 471.750 or to an employee of a licensee or agent, unless the person knowingly sells, gives or otherwise makes available alcoholic beverages to a person under the age of 21 years. For all other violations of subsection (2) of this section by a person licensed under the provisions of this chapter, by an agent appointed under ORS 471.750 or by an employee of the licensee or agent, the court shall impose a mandatory minimum sentence as follows:

- (a) Upon a first conviction, a fine of at least \$350.
- (b) Upon a second or subsequent conviction, a fine of at least \$1,000.

[(6)] (7) The court may waive an amount that is at least \$200 but not more than one-third of the fine imposed under subsection [(4)] (5) of this section, if the violator performs at least 30 hours of community service.

[(7)] (8) Except as provided in subsection [(6)] (7) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection [(4) or (5)] (5) or (6) of this section. In addition to the mandatory sentence, the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

[(8)] (9) A person who violates subsection (3) of this section commits a violation. Upon violation of subsection (3) of this section, the court shall impose at least a mandatory minimum fine as follows:

- (a) Upon a first conviction, a fine of \$350.
- (b) Upon a second or subsequent conviction, a fine of \$1,000.

[(9)] (10) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor.

SECTION 4. If Senate Bill 227 becomes law, section 2 of this 2009 Act is amended to read:

Sec. 2. The amendments to ORS 471.410 by section [I] 3 of this 2009 Act apply to:

(1) The selling, giving or making available of alcoholic liquor on or after the effective date of this 2009 Act for the purpose of enabling a person under the age of 21 years to possess the alcoholic liquor; and

(2) A person exercising control over private property at which a person under the age of 21 years consumes alcoholic liquor on or after the effective date of this 2009 Act.

Passed by House March 25, 2009

Repassed by House June 9, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 4, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State