

Enrolled
House Bill 3343

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to persons providing alcoholic beverages; 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]* **may** sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. 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) *[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 this subsection apply 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 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.

(4) **Except as provided in subsection (6) of this section,** 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) The court *[shall]* **may** not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (4) 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) The mandatory minimum penalty provisions of subsection (4) of this section shall not apply to persons licensed or appointed under the provisions of this chapter.]

(6)(a) A person who violates subsection (2) of this section is subject to a mandatory minimum penalty under this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$250.

(B) A second conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$500.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

(7) 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) 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. If House Bill 2246 becomes law and Senate Bill 227 does not become 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 House Bill 2246), is amended to read:

471.410. (1) 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*] **may** 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) 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.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(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.

(5) **Except as provided in subsection (7) of this section**, 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.

(6) The court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (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.

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

(7)(a) A person who violates subsection (2) of this section is subject to a mandatory minimum penalty under this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$250.

(B) A second conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$500.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

(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.

(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 3. If Senate Bill 227 becomes law and House Bill 2246 does not become 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]* **may** sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. 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) *[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 this subsection apply 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 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.

(4) **Except as provided in subsection (5) of this section**, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. [*Except as provided in subsection (5) 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) The mandatory minimum penalty provisions of subsection (4) 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.]

(5)(a) A person who violates subsection (2) of this section is subject to a mandatory minimum penalty under this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$350.

(B) A second conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$720.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

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

(7) Except as provided in subsection (6) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (4) or (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.

(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.

(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 4. If both House Bill 2246 and Senate Bill 227 become 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), and section 3, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2246), is amended to read:

471.410. (1) 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*] **may** 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) 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.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(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.

(5) **Except as provided in subsection (6) of this section**, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. [*Except as provided in subsection (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.

[(6) *The mandatory minimum penalty provisions of subsection (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)(a) A person who violates subsection (2) of this section is subject to a mandatory minimum penalty under this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$350.

(B) A second conviction is a Class A violation. The court shall impose a mandatory fine of not less than \$720.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

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

(8) Except as provided in subsection (7) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (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.

(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.

(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.

Passed by House May 7, 2009

Received by Governor:

Repassed by House June 15, 2009

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

Approved:

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Chief Clerk of House

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

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Speaker of House

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Governor

Passed by Senate June 11, 2009

Filed in Office of Secretary of State:

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

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President of Senate

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Secretary of State