WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2877

(By Delegates Lawrence, Phillips, D. Poling, Stowers, Ferro, Argento and Schadler)

Passed April 11, 2009

In Effect Ninety Days from Passage
ENROLLED
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FOR
H. B. 2877

(BY DELEGATES LAWRENCE, PHILLIPS, D. POLING, STOVERS, FERRO, ARGENTO AND SCHADLER)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §11-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-4 of said code; and to amend and reenact §60-3A-24 of said code, all relating to changing the use of alcoholic beverages by minors from a status offense to an act of juvenile delinquency; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-1-4 of said code be amended and reenacted; and that §60-3A-24 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.
§11-16-19. Unlawful acts of persons; criminal penalties.

(a) (1) Any person under the age of twenty-one years, who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $500 or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year. Any person convicted under this section may be sentenced pursuant to the provisions of section one-a, article eleven-a, chapter sixty-two of this code.

(2) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast-food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver nonintoxicating beer.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency.
or the West Virginia Alcohol Beverage Administration while 
the agency is conducting an investigation or other activity 
relating to the enforcement of the alcohol beverage control 
statutes and the rules of the commissioner.

(b) Any person under the age of twenty-one years who, 
for the purpose of purchasing nonintoxicating beer, 
misrepresents his or her age or who for such purpose presents 
or offers any written evidence of age which is false, 
fraudulent or not actually his or her own or who illegally 
attempts to purchase nonintoxicating beer is guilty of a 
misdemeanor and, upon conviction thereof, shall be fined an 
amount not to exceed $100 or shall be confined in jail, or in 
the case of a juvenile, a juvenile detention facility, for a 
period not to exceed seventy-two hours, or both such fine and 
confine ment or, in lieu of such fine and confinement, may, 
for the first offense, be placed on probation for a period not 
exceeding one year.

(c) Any person who shall knowingly buy for, give to or 
furnish nonintoxicating beer to anyone under the age of 
twenty-one to whom they are not related by blood or 
marriage is guilty of a misdemeanor and, upon conviction 
thereof, shall be fined an amount not to exceed $100 or shall 
be confined in jail for a period not to exceed ten days, or both 
such fine and confinement.

(d) (1) Any person who at any one time transports into 
the state for their personal use, and not for resale, more than 
six and seventy-five hundredths gallons of nonintoxicating 
beer, upon which the West Virginia barrel tax has not been 
imposed, shall be guilty of a misdemeanor and, upon 
conviction thereof, shall be fined an amount not to exceed 
$100 or confined for ten days in jail, or both fined and 
imprisoned. The untaxed nonintoxicating beer found in the 
person’s possession shall be confiscated.
(2) If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to national uniform drinking age of twenty-one as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Legislature that the provisions contained in this section and section eighteen of this article which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than twenty-one years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than nineteen years of age.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-4. Other definitions.

1 As used in this chapter:

2 (1) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities or any facility that provides care for unmarried mothers and their children;

9 (2) “Child advocacy center” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

13 (A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private,
child-friendly setting that is both physically and psychologically safe for clients;

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center;

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices;

(D) Cultural competency and diversity: The child advocacy center promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community;

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing;

(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to child advocacy center clients as part of the team response, either at the child advocacy center or through coordination and referral with other specialized medical providers;

(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the child advocacy center or through coordination and referral with other appropriate treatment providers;
(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the child advocacy center or through coordination with other providers, throughout the investigation and subsequent legal proceedings;

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis;

(J) Case tracking: Child advocacy centers must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location;

(3) "Community based", when referring to a facility, program, or service, means located near the juvenile's home or family and involving community participation in planning, operation and evaluation and which may include, but is not limited to, medical, educational, vocational, social and psychological guidance, training, special education, counseling, alcoholism and any treatment and other rehabilitation services;

(4) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided;

(5) "Custodian" means a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings;
...
of juveniles or other individuals held in lawful custody in such facility;

(14) "Staff-secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents;

(15) "Status offender" means a juvenile who has been adjudicated as one:

(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the child's behavior substantially endangers the health, safety or welfare of the juvenile or any other person;

(B) Who has left the care of his or her parents, guardian or custodian without the consent of such person or without good cause; or

(C) Who is habitually absent from school without good cause;

(16) "Valid court order" means a court order given to a juvenile who was brought before the court and made subject to such order and who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitutions of the United States and the State of West Virginia.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.
ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a) (1) Any person who is under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $500 or shall be confined in jail, or, in the case of a juvenile, a detention center, for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

(2) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Control Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing liquor from a retail licensee, misrepresents his or her age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase liquor from a retail licensee is guilty of
a misdemeanor and, upon conviction thereof, shall be fined
an amount not to exceed $100 or confined in jail, or, in the
case of a juvenile, a detention facility, for a period not to
exceed seventy-two hours, or both fined and confined or, in
lieu of such fine and confinement, may, for the first offense,
be placed on probation for a period not exceeding one year.
Any person convicted under this section may be sentenced
pursuant to the provisions of section one-a, article eleven-a,
chapter sixty-two of this code.

(c) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one to whom he
or she is not related by blood or marriage any liquor from
whatever source is guilty of a misdemeanor and, upon
conviction thereof, shall be fined an amount not to exceed
$250 dollars or confined in jail for a period not to exceed ten
days, or both fined and confined.

(d) No person while on the premises of a retail outlet may
consume liquor or break the seal on any package or bottle of
liquor. Any person who violates the provisions of this
subsection is guilty of a misdemeanor and, upon conviction
thereof, shall be fined an amount not to exceed $100 or
confined in jail for a period not to exceed ten days, or both
fined and confined.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 29th day of January, 2009.

Governor