

HB 2877

FILED

2009 MAY 12 PM 4: 01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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COMMITTEE SUBSTITUTE

FOR

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H. B. 2877

(BY DELEGATES LAWRENCE, PHILLIPS, D. POLING,
STOWERS, 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.

10:1 §11-16-19. Unlawful acts of persons; criminal penalties.

1 (a) (1) Any person under the age of twenty-one years,
2 who purchases, consumes, sells, possesses or serves
3 nonintoxicating beer is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined an amount not to exceed
5 \$500 or shall be confined in jail, or, in the case of a juvenile,
6 a detention facility, for a period not to exceed seventy-two
7 hours, or both fined and confined or, in lieu of such fine and
8 confinement, may, for the first offense, be placed on
9 probation for a period not to exceed one year. Any person
10 convicted under this section may be sentenced pursuant to the
11 provisions of section one-a, article eleven-a, chapter sixty-
12 two of this code.

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

29 (3) Nothing in this subsection shall prohibit a person who
30 is at least eighteen years of age from purchasing or
31 possessing nonintoxicating beer when he or she is acting
32 upon the request of or under the direction and control of any
33 member of a state, federal or local law-enforcement agency

34 or the West Virginia Alcohol Beverage Administration while
35 the agency is conducting an investigation or other activity
36 relating to the enforcement of the alcohol beverage control
37 statutes and the rules of the commissioner.

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

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

58 (d) (1) Any person who at any one time transports into
59 the state for their personal use, and not for resale, more than
60 six and seventy-five hundredths gallons of nonintoxicating
61 beer, upon which the West Virginia barrel tax has not been
62 imposed, shall be guilty of a misdemeanor and, upon
63 conviction thereof, shall be fined an amount not to exceed
64 \$100 or confined for ten days in jail, or both fined and
65 imprisoned. The untaxed nonintoxicating beer found in the
66 person's possession shall be confiscated.

67 (2) If the Congress of the United States repeals the
68 mandate established by the Surface Transportation Assistance
69 Act of 1982 relating to national uniform drinking age of
70 twenty-one as found in section six of Public Law 98-363, or
71 a court of competent jurisdiction declares the provision to be
72 unconstitutional or otherwise invalid, it is the intent of the
73 Legislature that the provisions contained in this section and
74 section eighteen of this article which prohibit the sale,
75 furnishing, giving, purchase or ownership of nonintoxicating
76 beer to or by a person who is less than twenty-one years of
77 age shall be null and void and the provisions therein shall
78 thereafter remain in effect and apply to the sale, furnishing,
79 giving, purchase or ownership of nonintoxicating beer to or
80 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
3 maintained by the state or any county or municipality thereof
4 or any agency or facility maintained by an individual, firm,
5 corporation, association or organization, public or private, to
6 receive children for care and maintenance or for placement in
7 residential care facilities or any facility that provides care for
8 unmarried mothers and their children;

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

13 (A) Child-appropriate/child-friendly facility: A child
14 advocacy center provides a comfortable, private,

15 child-friendly setting that is both physically and
16 psychologically safe for clients;

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

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

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

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

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

40 (G) Therapeutic intervention: Specialized mental health
41 services are to be made available as part of the team
42 response, either at the child advocacy center or through
43 coordination and referral with other appropriate treatment
44 providers;

45 (H) Victim support/advocacy: Victim support and
46 advocacy are to be made available as part of the team
47 response, either at the child advocacy center or through
48 coordination with other providers, throughout the
49 investigation and subsequent legal proceedings;

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

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

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

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

72 (5) "Custodian" means a person who has or shares actual
73 physical possession or care and custody of a child, regardless
74 of whether such person has been granted custody of the child
75 by any contract, agreement or legal proceedings;

76 (6) "Department" or "state department" means the State
77 Department of Health and Human Resources;

78 (7) "Division of Juvenile Services" means the division
79 within the Department of Military Affairs and Public Safety
80 pursuant to article five-e of this chapter;

81 (8) "Guardian" means a person who has care and custody
82 of a child as a result of any contract, agreement or legal
83 proceeding;

84 (9) "Juvenile delinquent" means a juvenile who has been
85 adjudicated as one who commits an act which would be a
86 crime under state law or a municipal ordinance if committed
87 by an adult;

88 (10) "Nonsecure facility" means any public or private
89 residential facility not characterized by construction fixtures
90 designed to physically restrict the movements and activities
91 of individuals held in lawful custody in such facility and
92 which provides its residents access to the surrounding
93 community with supervision;

94 (11) "Referee" means a juvenile referee appointed
95 pursuant to section one, article five-a of this chapter, except
96 that in any county which does not have a juvenile referee, the
97 judge or judges of the circuit court may designate one or
98 more magistrates of the county to perform the functions and
99 duties which may be performed by a referee under this
100 chapter;

101 (12) "Secretary" means the Secretary of Health and
102 Human Resources;

103 (13) "Secure facility" means any public or private
104 residential facility which includes construction fixtures
105 designed to physically restrict the movements and activities

106 of juveniles or other individuals held in lawful custody in
107 such facility;

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

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

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

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

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

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

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-24. Unlawful acts by persons.

1 (a) (1) Any person who is under the age of twenty-one
2 years who purchases, consumes, sells, serves or possesses
3 alcoholic liquor is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined an amount not to exceed
5 \$500 or shall be confined in jail, or, in the case of a juvenile,
6 a detention center, for a period not to exceed seventy-two
7 hours, or both fined and imprisoned or, in lieu of such fine
8 and incarceration, may, for the first offense, be placed on
9 probation for a period not to exceed one year.

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

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

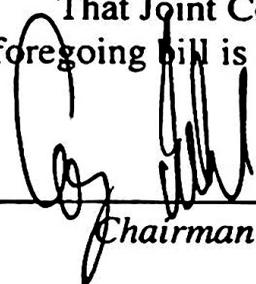
25 (b) Any person under the age of twenty-one years who,
26 for the purpose of purchasing liquor from a retail licensee,
27 misrepresents his or her age or who for such purpose presents
28 or offers any written evidence of age which is false,
29 fraudulent or not actually his or her own or who illegally
30 attempts to purchase liquor from a retail licensee is guilty of

31 a misdemeanor and, upon conviction thereof, shall be fined
32 an amount not to exceed \$100 or confined in jail, or, in the
33 case of a juvenile, a detention facility, for a period not to
34 exceed seventy-two hours, or both fined and confined or, in
35 lieu of such fine and confinement, may, for the first offense,
36 be placed on probation for a period not exceeding one year.
37 Any person convicted under this section may be sentenced
38 pursuant to the provisions of section one-a, article eleven-a,
39 chapter sixty-two of this code.

40 (c) Any person who knowingly buys for, gives to or
41 furnishes to anyone under the age of twenty-one to whom he
42 or she is not related by blood or marriage any liquor from
43 whatever source is guilty of a misdemeanor and, upon
44 conviction thereof, shall be fined an amount not to exceed
45 \$250 dollars or confined in jail for a period not to exceed ten
46 days, or both fined and confined.

47 (d) No person while on the premises of a retail outlet may
48 consume liquor or break the seal on any package or bottle of
49 liquor. Any person who violates the provisions of this
50 subsection is guilty of a misdemeanor and, upon conviction
51 thereof, shall be fined an amount not to exceed \$100 or
52 confined in jail for a period not to exceed ten days, or both
53 fined and confined.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



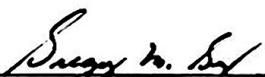
Chairman House Committee

Originating in the House.

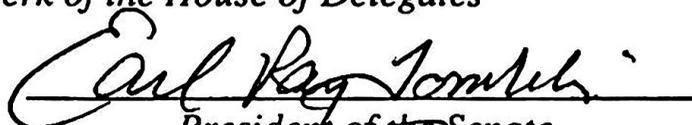
In effect ninety days from passage.



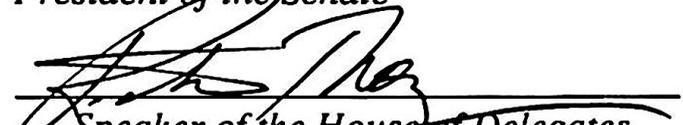
Clerk of the Senate



Clerk of the House of Delegates

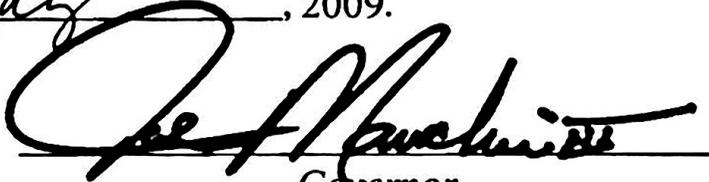


President of the Senate



Speaker of the House of Delegates

The within is approved this the 12th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY · 8 2009

Time 2:25 pm