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H. B. 2109

(By Delegate Ennis)
[Introduced January 12, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §60-7-12 of the Code of West Virginia, 1931, as amended, relating to the creation of an affirmative defense for certain civil and criminal actions arising from the sale of alcoholic liquors, wine and nonintoxicating beer by licensed private clubs to persons less than the age of twenty-one whose age is verified by use of scanner technology.

Be it enacted by the Legislature of West Virginia:

That §60-7-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or its agent, employee or member ~~thereof~~, on such licensee's premises to:

1 (1) Sell or offer for sale any alcoholic liquors other than
2 from the original package or container;

3 (2) Authorize or permit any disturbance of the peace; obscene,
4 lewd, immoral or improper entertainment, conduct or practice;
5 gambling or any slot machine, multiple coin console machine,
6 multiple coin console slot machine or device in the nature of a
7 slot machine;

8 (3) Sell, give away or permit the sale of, gift to or the
9 procurement of any nonintoxicating beer, wine or alcoholic liquors
10 for or to, or permit the consumption of nonintoxicating beer, wine
11 or alcoholic liquors on the licensee's premises, by any person less
12 than twenty-one years of age;

13 (4) Sell, give away or permit the sale of, gift to or the
14 procurement of any nonintoxicating beer, wine or alcoholic liquors,
15 for or to any person known to be deemed legally incompetent, or for
16 or to any person who is physically incapacitated due to consumption
17 of nonintoxicating beer, wine or alcoholic liquor or the use of
18 drugs;

19 (5) Sell, give or dispense nonintoxicating beer, wine or
20 alcoholic liquors in or on any licensed premises or in any directly
21 connected rooms ~~directly connected therewith,~~ between the hours of
22 three o'clock a.m. and one o'clock p.m. on any Sunday;

23 (6) Permit the consumption by, or serve to, on the licensed
24 premises any nonintoxicating beer, wine or alcoholic liquors,

1 covered by this article, to any person who is less than twenty-one
2 years of age;

3 (7) ~~With the intent to defraud,~~ Alter, change or misrepresent
4 the quality, quantity or brand name of any alcoholic liquor with
5 the intent to defraud;

6 (8) Sell or offer for sale any alcoholic liquor to any person
7 who is not a duly elected or approved dues paying member in good
8 standing of said private club or a guest of such member;

9 (9) Sell, offer for sale, give away, facilitate the use of or
10 allow the use of carbon dioxide, cyclopropane, ethylene, helium or
11 nitrous oxide for purposes of human consumption except as
12 authorized by the commissioner;

13 (10) (A) Employ any person who is less than eighteen years of
14 age in a position where the primary responsibility for such
15 employment is to sell, furnish or give nonintoxicating beer, wine
16 or alcoholic liquors to any person;

17 (B) Employ any person who is between the ages of eighteen and
18 twenty-one who is not directly supervised by a person aged twenty-
19 one or over in a position where the primary responsibility for such
20 employment is to sell, furnish or give nonintoxicating beer, wine
21 or alcoholic liquors to any person; or

22 (11) Violate any reasonable rule of the commissioner.

23 (b) It is unlawful for any licensee to advertise in any news
24 media or other means, outside of the licensee's premises, the fact

1 that alcoholic liquors may be purchased ~~thereat~~ at the premises.

2 (c) Any person who violates any of the foregoing provisions is
 3 guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be
 4 fined not less than \$500 nor more than \$1,000, or ~~imprisoned~~
 5 confined in ~~the county~~ jail for a period not to exceed one year, or
 6 both fined and ~~imprisoned~~ confined.

7 (d) In the absence of fraud, malice, bad faith, or wanton or
 8 reckless action, it is a defense to a violation of either or both
 9 subdivision (3) or subdivision (6) of subsection (a) of this
 10 section, if the licensee, agent, or employee shows that:

11 (1) Scanner technology as defined in and authorized by section
 12 twenty-two, article two of this chapter was used to verify the age
 13 of the purchaser at the time of the purchase;

14 (2) Scanner technology indicated that the driver's license or
 15 identification card was valid;

16 (3) The driver's license or identification card stated that
 17 the purchaser was at least twenty-one years of age; and

18 (4) The purchaser appeared to match the physical description
 19 or picture on the driver's license or identification card.

NOTE: The purpose of this bill is to provide a defense to licensees civilly or criminally charged with selling alcoholic liquors, nonintoxicating beer or wine to minors when the licensees have responsibly used scanner technology to verify age.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.