

By: Romero, Jr., Walle, White of Tyler

H.B. No. 3982

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to solicitation of a person to buy drinks for consumption  
3 by an alcoholic beverage retailer or the retailer's employee;  
4 authorizing a civil penalty; amending a provision that is subject  
5 to a criminal penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 11.64(a), Alcoholic Beverage Code, is  
8 amended to read as follows:

9 (a) When the commission or administrator is authorized to  
10 suspend a permit or license under this code, the commission or  
11 administrator shall give the permittee or licensee the opportunity  
12 to pay a civil penalty rather than have the permit or license  
13 suspended, unless the basis for the suspension is a violation of  
14 Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3),  
15 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04,  
16 101.63, 104.01(a)(4), 106.03, 106.06, or 106.15, the sale or offer  
17 for sale of an alcoholic beverage during hours prohibited by  
18 Chapter 105, consumption or the permitting of consumption of an  
19 alcoholic beverage on the person's licensed or permitted premises  
20 during hours prohibited by Chapter 105 or Section 32.17(a)(7), or  
21 an offense relating to prostitution, trafficking of persons, or  
22 gambling, in which case the commission or administrator shall  
23 determine whether the permittee or licensee may have the  
24 opportunity to pay a civil penalty rather than have the permit or

1 license suspended. The commission shall adopt rules addressing  
2 when suspension may be imposed pursuant to this section without the  
3 opportunity to pay a civil penalty. In adopting rules under this  
4 subsection, the commission shall consider the type of license or  
5 permit held, the type of violation, any aggravating or ameliorating  
6 circumstances concerning the violation, and any past violations of  
7 this code by the permittee or licensee. In cases in which a civil  
8 penalty is assessed, the commission or administrator shall  
9 determine the amount of the penalty. The amount of the civil  
10 penalty may not be less than \$150 or more than \$25,000 for each day  
11 the permit or license was to have been suspended. If the licensee  
12 or permittee does not pay the penalty before the sixth day after the  
13 commission or administrator notifies him of the amount, the  
14 commission or administrator shall impose the suspension.

15 SECTION 2. Section 104.01, Alcoholic Beverage Code, is  
16 amended to read as follows:

17 Sec. 104.01. LEWD, IMMORAL, INDECENT CONDUCT. (a) No  
18 person authorized to sell beer at retail, nor the person's [~~his~~  
19 agent, servant, or employee, may engage in or permit conduct on the  
20 premises of the retailer which is lewd, immoral, or offensive to  
21 public decency, including, but not limited to, any of the following  
22 acts:

23 (1) the use of loud and vociferous or obscene, vulgar,  
24 or indecent language, or permitting its use;

25 (2) the exposure of a person or permitting a person to  
26 expose himself or herself [~~his person~~];

27 (3) rudely displaying or permitting a person to rudely

1 display a pistol or other deadly weapon in a manner calculated to  
2 disturb persons in the retail establishment;

3 (4) solicitation of any person to buy drinks for  
4 consumption by the retailer or any of the retailer's [~~his~~]  
5 employees;

6 (5) being intoxicated on the licensed premises;

7 (6) permitting lewd or vulgar entertainment or acts;

8 (7) permitting solicitations of persons for immoral or  
9 sexual purposes;

10 (8) failing or refusing to comply with state or  
11 municipal health or sanitary laws or ordinances; or

12 (9) possession of a narcotic or any equipment used or  
13 designed for the administering of a narcotic or permitting a person  
14 on the licensed premises to do so.

15 (b) For purposes of Subsection (a)(4), a solicitation is  
16 presumed if an alcoholic beverage is sold or offered for sale for  
17 an amount in excess of the retailer's listed, advertised, or  
18 customary price. The presumption may be rebutted only by evidence  
19 presented under oath.

20 SECTION 3. (a) Section 11.64(a), Alcoholic Beverage Code,  
21 as amended by this Act, applies only to the imposition of a penalty  
22 for a violation that occurs on or after the effective date of this  
23 Act. The imposition of a penalty for a violation that occurs before  
24 the effective date of this Act is governed by the law in effect  
25 immediately before the effective date of this Act, and that law is  
26 continued in effect for that purpose.

27 (b) Section 104.01(b), Alcoholic Beverage Code, as added by

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1 this Act, applies only to the sale or offer for sale of an alcoholic  
2 beverage on or after the effective date of this Act.

3 SECTION 4. This Act takes effect September 1, 2015.