

By: Romero, Jr.

H.B. No. 3982

A BILL TO BE ENTITLED

AN ACT

relating to solicitation to buy drinks for consumption by a retailer.

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

SECTION 1. Subtitle A, Title 3, Sec. 11.64, Alcoholic Beverage Code, is amended to read as follows:

Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION. (a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless the basis for the suspension is a violation of Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3), 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04, 101.63, 104.01(4), 106.03, 106.06, or 106.15, the sale or offer for sale of an alcoholic beverage during hours prohibited by Chapter 105, consumption or the permitting of consumption of an alcoholic beverage on the person's licensed or permitted premises during hours prohibited by Chapter 105 or Section 32.17(a)(7), or an offense relating to prostitution, controlled substance or drugs, trafficking of persons, or gambling, in which case the commission or administrator shall determine whether the permittee or licensee may have the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission shall adopt rules

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

15 (b) In the case of a violation of this code by a permittee or
16 a licensee, the commission or administrator may relax any provision
17 of the code relating to the suspension or cancellation of the permit
18 or license and assess a sanction the commission or administrator
19 finds just under the circumstances, and the commission or
20 administrator may reinstate the license or permit at any time
21 during the period of suspension on payment by the permittee or
22 licensee of a fee of not less than \$75 nor more than \$500, if the
23 commission or administrator finds that any of the circumstances
24 described in Subsection (c) exists.

25 (c) The following circumstances justify the application of
26 Subsection (b):

27 (1) that the violation could not reasonably have been

1 prevented by the permittee or licensee by the exercise of due
2 diligence;

3 (2) that the permittee or licensee was entrapped;

4 (3) that an agent, servant, or employee of the
5 permittee or licensee violated this code without the knowledge of
6 the permittee or licensee;

7 (4) that the permittee or licensee did not knowingly
8 violate this code;

9 (5) that the permittee or licensee has demonstrated
10 good faith, including the taking of actions to rectify the
11 consequences of the violation and to deter future violations; or

12 (6) that the violation was a technical one.

13 (d) Fees and civil penalties received by the commission
14 under this section shall be deposited in the general revenue fund.

15 SECTION 2. Title 4, Sec. 104.01, Alcoholic Beverage Code,
16 is amended by adding subsection (a) to read as follows:

17 (4) solicitation of any person to buy drinks for
18 consumption by the retailer or any of his employees;

19 (a) solicitation is presumed if an alcoholic
20 beverage is sold or offered for sale for an amount in excess of the
21 permit holder's listed, advertised, or customary price. The
22 presumption may be rebutted only by evidence presented under oath.

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