

HOUSE BILL 2925

By Moore

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15 and Title 57, relative to sale of beer for on-the-premises consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 5, is amended by adding Sections 2 through 11 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Responsible Server Act of 2010".

SECTION 3. It is the intent of the general assembly through the provisions of this part:

- (1) To eliminate the sale of beer for on-the-premises consumption to, and consumption of beer by, underage persons;
- (2) To reduce intoxication and to reduce accidents, injuries, and deaths in the state which are related to intoxication;
- (3) To encourage vendors to be prudent in their selling practices of beer and to restrict or reduce the sanctions that may be imposed in administrative proceedings by local beer boards against those vendors who voluntarily comply with responsible practices in accordance with this part; and
- (4) To uniformly apply all provisions in this part statewide including training, certification, and the imposition of penalties or other sanctions for violations of this part, and that no variations from the provisions on training, certification, or penalties are permissible.

SECTION 4. As used in this part, unless the context otherwise requires:

- (1) "Beer" has the same meaning as defined in Section 57-5-101(b);

(2) "Beer board" means any entity issuing beer permits for on-premise consumption pursuant to part 1 of this chapter;

(3) "Certified server" means a server who has successfully satisfied the training requirements compiled in title 57, chapter 3, part 7;

(4) "Commission" means the alcoholic beverage commission;

(5) "Responsible vendor" means a vendor that has received certification from the commission pursuant to this part;

(6) "Responsible vendor training program" means any training program specified in title 57, chapter 3, part 7;

(7) "Server" means any person working in a capacity to sell beer directly to consumers for on-premise consumption; and

(8) "Vendor" means a person, corporation, or other entity that has been issued a permit to sell beer for on-premise consumption.

SECTION 5. The commission shall establish and keep a master list of certified servers and servers not eligible for certification.

SECTION 6.

(a) A vendor who seeks certification as a responsible vendor shall provide to the commission, pursuant to procedures adopted by the commission, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with the requirements, the commission shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed every year.

(b) The commission shall adopt rules and regulations for monitoring compliance by responsible vendors and for revoking or suspending a responsible vendor's certification for noncompliance with this part.

(c) The commission is authorized to monitor and enforce compliance with this part. The commission may impose fines on responsible vendors whose training programs fail to satisfy or maintain the requirements of this part or commission rules. The commission may further impose fines on vendors who hold themselves out as being a “responsible vendor” when in fact they do not hold that status. The commission may also impose fines on responsible vendors who willfully fail to comply with the requirements of this part.

(d) Determination of compliance with the responsible vendor program is the sole province of the commission.

SECTION 7. In order to qualify for responsible vendor status, the vendor shall comply with the following requirements:

(1)

(A) Require each and every server to successfully complete a training program certified by the commission under §57-3-705 within sixty-one (61) days of commencing employment whether the employment is for the first time, after re-hiring, or for a different responsible vendor. Responsible vendors shall, prior to employing a server, verify with the commission that the server is eligible for certification;

(B) Each server must successfully complete the training program and after doing so, receive a certificate of completion from the program trainer in a format that is in accordance with rules promulgated by the commission. A server shall not be authorized to sell beer for on-premise consumption at a responsible vendor establishment unless the server has successfully completed the training program and has received a certificate of completion or is within sixty-one (61) days of the date of hire. The responsible vendor employing the server shall

maintain the original certificate of completion. The responsible vendor shall provide the commission with the names and other identifying information as required by the commission of certified servers within twenty-one (21) days of the date of training.

(2) Provide instruction for its employees approved by the commission which shall include the following:

(A) Laws regarding the sale of beer for on-premise consumption;

(B) Methods of recognizing and dealing with underage customers; and

(C) Procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers.

(3) Require all certified servers to attend at least one (1) annual meeting, at which the responsible vendor will disseminate updated information prescribed by the commission and the responsible vendor's policies and procedures related thereto. In order for the server's certification to remain valid, the server must attend an annual meeting each year following his original certification; and the responsible vendor must keep records thereof. Responsible vendors shall notify the commission if a certified server does not attend an annual meeting as required by this section. The commission may, at any time, require responsible vendors to disseminate to certified servers information from the commission that is related to changes in state law or commission rules; and

(4) Maintain employment and all responsible vendor training records of all servers.

SECTION 8. Each server permit shall be valid for a period of five (5) years. Applications for renewal shall be made in the same manner as applications for original permits upon forms prescribed by the commission. Server permits shall not be transferable.

SECTION 9. If a beer board determines that a sale to a minor occurred by an on-premise beer permit holder, then the certification of the server making the sale shall be invalid and the server may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. Beer boards shall report the names of such servers to the commission within fifteen (15) days of finding that a sale to a minor occurred. The commission shall notify the responsible vendor of their certified servers who have lost their certification within fifteen (15) days of notification by the beer board.

SECTION 10.

(a) The permit of a responsible vendor under this part may not be suspended or revoked by a beer board based on a server's illegal sale of beer to a minor person who is not of lawful drinking age if the server is properly certified and has attended annual meetings since the original certification or is within sixty-one (61) days of the date of hire at the time of the violation.

(b) Notwithstanding the provisions of subsection (a), the commission shall revoke the certification of a vendor certified as a responsible vendor, if the vendor had knowledge of the violation or should have known about the violation, or participated in or committed the violation. If the commission revokes a vendor's certification under this section, the vendor shall be penalized for the violation by the beer board as if the vendor was not certified as a responsible vendor.

(c) Notwithstanding the provisions of subsection (a) or any other provision of law, the commission shall revoke the vendor's status as a certified responsible vendor if such vendor has two (2) violations within a twelve-month period. The revocation shall be for a period of three (3) years.

SECTION 11.

(a) Each entity submitting and receiving approval for a responsible vendor training program shall pay an annual non-refundable fee of thirty-five dollars (\$35.00). In addition, each responsible vendor shall pay an annual fee that is based on the number of certified servers existing at the time a responsible vendor applies to the commission for certification. The fees shall be as follows:

- (1) 0-15 certified servers - \$25.00;
- (2) 16-49 certified servers -\$75.00;
- (3) 50-100 certified servers -\$150; and
- (4) Over 100 certified servers -\$250.

(b) The fees shall be deposited by the commission in a special agency account to be known as the “responsible vendor certification fund”, hereinafter referred to in this part as the “fund”.

(c) Any fund balance remaining unexpended at the end of a fiscal year shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the vendor certification program.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the commission.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes as provided in this part.

SECTION 12. Tennessee Code Annotated, Section 39-15-413, is amended by deleting subsection (d) and substituting instead the following:

(d) No prosecution for the violation of any statute prohibiting the sale of beer for on or off-premises consumption to a person under twenty-one (21) years of age, shall be

commenced if such prosecution is based upon the use of a person under twenty-one (21) years of age, as authorized by this section, unless such person or the law enforcement officer supervising such person obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. All "stings" shall be conducted in accordance to state law in order to be valid. In addition, within ten (10) days of the date the action occurred, the law enforcement officer shall notify the permit holder in writing, either by mail or hand delivery, indicating:

- (1) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for on or off-premises consumption;
- (2) The date and location of the action;
- (3) The name of the permit holder and the employee from whom the beer was purchased or attempted to be purchased; and
- (4) Whether the person was successful in making the purchase.

SECTION 13. Tennessee Code Annotated, Section 57-5-108(a)(1), is amended by deleting subdivisions (A) and (B) in their entirety and by substituting instead the following:

- (1)
 - (A) A city, Class A county, or Class B county, or any committee, board, or commission created by these governmental bodies, shall not, pursuant to § 57-5-608 or Section 10 of this act revoke or suspend the permit of a responsible vendor for a clerk or server's illegal sale of beer to a minor, if the permit or license holder and the clerk or server making the sale have complied with the requirements of § 57-5-606 or Section 7 of this act as a responsible vendor under this part, but may impose on the responsible vendor a civil penalty not to exceed

one thousand dollars (\$1,000) for each offense of making or permitting to be made any sales to minors or for any other offense. If an offense occurs more than five (5) years following another offense, such offense shall be considered a first offense.

(B) The prohibition of subdivision (a)(1)(A) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a responsible vendor under this part, or to a participating vendor, if the clerk or server making a sale to a minor fails to comply with the requirements of § 57-5 - 606 or Section 7 of this act. With respect to such permit or license holder, the committee, board, or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000) for any other offense.

SECTION 14. For the purpose of promulgating rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2010, the public welfare requiring it.