

COMMITTEE SUBSTITUTE

FOR

**H. B. 3172**

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(BY DELEGATES CAPUTO, PETHTEL, WILLIAMS, D. POLING,  
VARNER, MAHAN, FERRO, SHAVER, HAMILTON AND BOGGS)

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(Originating in the Committee on Finance)  
[February 28, 2011]

A BILL to amend and reenact §11-16-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-2-12 of said code, all relating to the Alcohol Beverage Control Commission; requiring the Division of Personnel review and evaluate the employees of the Alcohol Beverage Control Commission; permitting Alcohol Beverage Control Commission employees to be included in the civil service;

providing exemption of inclusion of certain positions; requiring a report to the legislature; and removing out-dated language from the code.

*Be it enacted by the Legislature of West Virginia:*

That §11-16-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-2-12 be amended and reenacted; all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-4. Responsibility of Alcohol Beverage Control Commissioner; administrators, employees and agents; administration and enforcement expenses.**

- 1 (a) The Alcohol Beverage Control Commissioner
- 2 described under the provisions of article two, chapter sixty of
- 3 this code shall have sole responsibility for the administration
- 4 of this article, except for those responsibilities expressly
- 5 vested in the Tax Commissioner under sections thirteen,
- 6 fourteen and fifteen of this article.

7 ~~All acts heretofore performed by the nonintoxicating beer~~  
8 ~~commissioner under previous proceedings of this article are~~  
9 ~~hereby again ratified and confirmed, and the commissioner~~  
10 ~~shall succeed to the same position previously maintained by~~  
11 ~~the nonintoxicating beer commissioner in all proceedings and~~  
12 ~~official acts instituted and perfected under the provisions of~~  
13 ~~this article prior to the effective date of this section.~~

14 (b) The commissioner shall appoint an adequate number  
15 of competent persons to serve as administrators, employees  
16 and agents of the commissioner for the purpose of keeping  
17 all necessary accounts and records required under the  
18 provisions of this article; investigating the books, accounts,  
19 records and other papers of retailers, distributors and  
20 brewers; investigating applicants for license and the places of  
21 business of retailers, distributors and brewers; procuring  
22 evidence with respect to violations of the provisions of this  
23 article, and particularly for use at hearings held by the  
24 commissioner and on proceedings instituted in court for the  
25 purpose of revoking or suspending licenses hereunder; and

26 such administrators, employees and agents shall perform  
27 such other duties as the commissioner may direct. Such  
28 administrators, employees and agents shall have the right to  
29 enter any licensed premises in the state in the performance of  
30 their duties at any hour of the day or night when beer is being  
31 sold or consumed on such licensed premises. Refusal by any  
32 licensee or by any employee of a licensee to permit such  
33 administrators, employees or agents to enter the licensed  
34 premises shall be an additional cause for revocation or  
35 suspension of the license of such licensee by the  
36 commissioner. ~~The compensation of such administrators,~~  
37 ~~employees and agents shall be fixed by the commissioner.~~  
38 Provided, That the commissioner may employ up to eleven  
39 ~~special investigators who shall be nonclassified exempt~~  
40 ~~employees of the division.~~

41 (c) Services rendered the state by clerks, sheriffs,  
42 commissioners in chancery and special commissioners,  
43 designated by the court, and court reporters and  
44 stenographers performing services for said commissioner and

45 fees of witnesses summoned on behalf of the state in  
46 proceedings to revoke or suspend retailer's licenses shall be  
47 treated as part of the expenses of administration and  
48 enforcement, and such officers and said other persons shall be  
49 paid the same fees and charges as would be chargeable for like  
50 services performed for an individual; and the compensation of  
51 such clerks, sheriffs and other persons shall be paid out of the  
52 amount allocated for the expense of administration enforcement,  
53 after the amount of such fees and other charges shall be certified  
54 by the court to the Auditor.

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC  
LIQUORS.**

**ARTICLE 2. ALCOHOL BEVERAGE CONTROL  
COMMISSIONER.**

**§60-2-12. Assistants and employees.**

1 (a) The commission shall appoint or employ ~~such~~  
2 ~~assistants and employees~~ persons as may be necessary to the  
3 efficient operation of the department. ~~and fix their salaries.~~  
4 All assistants and employees shall be appointed or employed  
5 to serve during the will and pleasure of the commission.

6        (b) An employee who is in a position that is not part of  
7        the classified system may be added to the classified service  
8        under the Division of Personnel by July 1, 2012. The  
9        Division of Personnel shall review the organization and  
10       employment structure of the Alcohol Beverage Control  
11       Administration and report to the Joint Committee on  
12       Government and Finance before December 31, 2011 with a  
13       recommendation as to the process for the transition of such  
14       employees.

15       (c) The division shall review and evaluate each  
16       employee's job duties and qualifications to determine which  
17       classification and compensation is appropriate for that  
18       employee.

19       (d) Upon completion of the division's review and  
20       evaluation, the employee will be provided with his or her  
21       written review and evaluation in a meeting with the staff of  
22       the Division of Personnel.

23       (e) The division shall classify the employee in the  
24       appropriate classification for the job duties which the

25 employee performs: *Provided*, That the employee's salary or  
26 benefits may not be reduced.

27 (f) The commissioner, deputy commissioners and  
28 division directors are exempt from the classified service:  
29 *Provided*, That if a division director is currently in classified  
30 service, that director shall retain his or her classified status.