

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 508**

(By Senators Beach, Edgell, Kessler  
(Acting President) and Klempa)

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[Originating in the Committee on the Judiciary;  
reported February 23, 2011.]

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A BILL to amend the Code of West Virginia, 1931, by adding thereto a new section, designated §60-3A-3a; and to amend and reenact §60-3A-4 of said code, all relating to liquor sampling; authorizing liquor sampling on Class A retail licenses; setting requirements for holding a liquor sampling; creating penalties; authorizing emergency rules or legislative rules; and defining terms.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §60-3A-3a; and that §60-3A-4 of said code be amended and reenacted, all to read as follows:

**ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

**§60-3A-3a. Liquor sampling.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, a Class A retail licensee may, with the written  
3 approval of the commissioner, conduct a liquor sampling  
4 event on a designated sampling day.

5 (b) At least five business days prior to the liquor sampling,  
6 the Class A retail licensee shall submit a written proposal to  
7 the commissioner requesting to hold a liquor sampling event,  
8 including:

9 (1) The day of the event;

10 (2) The location of the event;

11 (3) The times for the event; and

12 (4) The specific brand and flavor of the West Virginia  
13 product to be sampled.

14 (c) Upon approval by the commissioner, a Class A retail  
15 licensee may serve a complimentary liquor sample of the  
16 approved brand and flavor of the West Virginia product that  
17 is purchased by the Class A retail licensee from the commis-  
18 sioner.

19 (d) The complimentary liquor samples on any sampling day  
20 shall not exceed:

21 (1) One separate and individual sample serving per cus-  
22 tomer verified to be twenty-one years of age or older; and

23 (2) One ounce in total volume.

24 (e) Servers at the liquor sampling event shall:

25 (1) Be employees of the Class A retail licensee;

26 (2) Be at least twenty-one years of age or older; and

27 (3) Have specific knowledge of the West Virginia product  
28 being sampled to convey to the customer.

29 (f) All servers at the liquor sampling event shall verify the  
30 age of the customer sampling liquor by requiring and  
31 reviewing proper forms of identification. Servers at the  
32 liquor sampling event may not serve any person who is:

33 (1) Under the age of twenty-one years; or

34 (2) Intoxicated.

35 (g) A liquor sampling event shall:

36 (1) Occur only inside the Class A retail licensee's licensed  
37 premises; and

38 (2) Cease on or before 9:00 p.m. on any approved sampling  
39 day.

40 (h) Any liquor bottle used for sampling must be clearly and  
41 conspicuously labeled "SAMPLE, NOT FOR RESALE". If the  
42 seal is broken on any liquor bottle or if any liquor bottle is

43 opened, then that liquor bottle must be removed from the  
44 licensed premises immediately following the event.

45 (i) Violations of this section are subject to the penalties set  
46 forth in this article.

47 (j) To implement the provisions of this section, the commis-  
48 sioner may promulgate emergency rules pursuant to the  
49 provisions of section fifteen, article three, chapter twenty-  
50 nine-a of this code or propose rules for legislative approval  
51 in accordance with the provisions of article three, chapter  
52 twenty-nine-a of this code.

**§60-3A-4. Definitions.**

1 (a) “Active retail license” means a current license for a  
2 retail outlet that has been open and in continuous operation  
3 for a period of not less than twelve months prior to July 1,  
4 2010, or July 1 every ten years thereafter.

5 (b) “Active retail licensee” means a person who holds an  
6 active retail license at the time of the effective date of the  
7 amendments to this section during the first extraordinary  
8 session of the Legislature in 2009 or that person’s successor  
9 or any person who holds an active retail license when it  
10 expires at the end of a ten-year period.

11 (c) “Applicant” means any person who elects to pay a  
12 purchase option for a Class A retail license, who bids for a  
13 retail license or who seeks the commissioner’s approval to  
14 purchase or otherwise acquire a retail license from a retail  
15 licensee, in accordance with the provisions of this article.

16 (d) “Application” means the form prescribed by the  
17 commissioner which must be filed with the commissioner by  
18 any person bidding for a retail license.

19 (e) “Board” means the Retail Liquor Licensing Board  
20 created by this article.

21 (f) “Class A retail license” means a retail license permitting  
22 the retail sale of liquor at a freestanding liquor retail outlet.

23 (g) “Class B retail license” means a retail license permit-  
24 ting the sale of liquor at a mixed retail liquor outlet.

25 (h) “Current retail licensee” means a person who holds a  
26 retail license at the time of the effective date of the amend-  
27 ments to this section during the first extraordinary session of  
28 the Legislature in 2009 or that person’s successor or any  
29 person who holds a retail license when it expires at the end  
30 of a ten-year period.

31 (i) “Designated areas” means one or more geographic areas  
32 within a market zone designated as such by the board.

33 (j) "Executive officer" means the president or other  
34 principal officer, partner or member of an applicant or retail  
35 licensee, any vice president or other principal officer, partner  
36 or member of an applicant or retail licensee in charge of a  
37 principal business unit or division, or any other officer,  
38 partner or member of an applicant or retail licensee who  
39 performs a policy-making function.

40 (k) "Freestanding liquor retail outlet" means a retail outlet  
41 that sells only liquor, beer, nonintoxicating beer and other  
42 alcohol-related products, including tobacco related products.

43 (l) "Liquor" means alcoholic liquor as defined in section  
44 five, article one of this chapter and also includes both wine  
45 and fortified wines as those terms are defined in section two,  
46 article eight of this chapter.

47 (m) "Liquor sampling event" means an event approved by  
48 the commissioner, for a Class A retail licensee to hold a  
49 liquor sampling during which only one specific brand of  
50 West Virginia product may be sampled per day, per cus-  
51 tomer, twenty-one years of age or older, as set out in section  
52 three-a of this article.

53 ~~(m)~~ (n) "Market zone" means a geographic area designated  
54 as such by the board for the purpose of issuing retail li-  
55 censes.

56 ~~(n)~~ (o) “Mixed retail liquor outlet” means a retail outlet  
57 that sells liquor, beer, nonintoxicating beer and other  
58 alcohol-related products, including tobacco-related prod-  
59 ucts, in addition to convenience and other retail products.

60 ~~(o)~~ (p) “Person” means an individual, firm, corporation,  
61 association, partnership, limited partnership, limited  
62 liability company or other entity, regardless of its form,  
63 structure or nature.

64 ~~(p)~~ (q) “Retail license” means a license issued under the  
65 provisions of this article permitting the sale of liquor at  
66 retail.

67 ~~(q)~~ (r) “Retail licensee” means the holder of a retail license.

68 ~~(r)~~ (s) “Retail outlet” means a specific location where  
69 liquor may be lawfully sold by a retail licensee under the  
70 provisions of this article.

71 (t) “Sampling day” means any day of the week where retail  
72 licensees may sell liquor pursuant to section eighteen, article  
73 three-a, chapter sixty of this code, and is approved, in  
74 writing, by the commissioner for a Class A retail licensee to  
75 conduct a liquor sampling event.

76 (u) “West Virginia product” means all bourbon, brandy,  
77 cognac, cordials, gin, grain alcohol, rye, rum, scotch, tequila,

78 vermouth, vodka, whiskey, apertifs, premixed cocktails,  
79 fortified wines, spirit blends, marsala, sake, sherry and any  
80 other liquor types and classes as approved by the commis-  
81 sioner and maintained on the ABCA retail liquor product  
82 list.

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(NOTE: The purpose of this bill is to allow Class A retail licenses (as defined in chapter 60, Article 3A, section 4) or freestanding liquor retail outlets the ability to conduct responsible liquor sampling events on days of the week, other than Sunday. Violators of these sections are subject to civil and criminal penalties imposed by article 3A.

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

§60-3A-3a is new; therefore, strike-throughs and underscoring have been omitted.)