

Adopted by House 4-12-2013

SB498 H JUD AM 4-10 #1

The House Judiciary Committee moves to amend the bill on page two, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following language:

1 "CHAPTER 11. TAXATION.

2 ARTICLE 16. NONINTOXICATING BEER.

3 §11-16-24. Hearing on sanctioning of license; notice; review of
4 action of commissioner; clerk of court to furnish
5 commissioner copy of order or judgment of
6 conviction of licensee; assessment of costs;
7 procedure for appealing any final order of the
8 commissioner which revokes, suspends, sanctions or
9 denies the issuance or renewal of any license
10 issued under this article.

11 (a) The commissioner ~~shall~~ may not revoke ~~nor~~ or suspend ~~any~~
12 a license issued pursuant to this article or impose ~~any civil~~
13 ~~penalties~~ a civil penalty authorized ~~thereby~~ under this article
14 unless and until a hearing ~~shall be~~ is held after at least ten
15 days' notice to the licensee of the time and place of ~~such~~ the
16 hearing, which notice shall contain a statement or specification of
17 the charges, grounds or reasons for ~~such~~ the proposed contemplated

1 action, and which ~~shall be~~ is served upon the licensee as notices
2 under the West Virginia Rules of Civil Procedure or by certified
3 mail, return receipt requested, to the address for which license
4 was issued; at which time and place, so designated in the notice,
5 the licensee ~~shall have~~ has the right to appear and produce
6 evidence in his or her behalf, and to be represented by counsel.

7 **(b)** The commissioner ~~shall have authority to~~ may summon
8 witnesses in the hearings before him or her, and fees of witnesses
9 summoned on behalf of the state in proceedings to sanction licenses
10 shall be treated as a part of the expenses of administration and
11 enforcement. ~~Such~~ The fees shall be the same as those in similar
12 hearings in the circuit courts of this state. The commissioner
13 may, upon a finding of violation, assess a licensee a sum not to
14 exceed \$150 per violation to reimburse the commissioner for
15 expenditures for witness fees, court reporter fees and travel costs
16 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
17 transferred to the Nonintoxicating Beer Fund created by section
18 twenty-three of this article.

19 **(c)** If, at the request of the licensee or on his or her
20 motion, the hearing ~~shall be~~ is continued and ~~shall~~ does not take
21 place on the day fixed by the commissioner in the notice ~~above~~
22 ~~provided for~~ of hearing, then ~~such~~ the licensee's license may be
23 suspended until the hearing and decision of the commissioner, and
24 in the event of revocation or suspension of ~~such~~ the license, upon

1 hearing before the commissioner, the licensee ~~shall not be~~ is not
2 permitted to sell beer pending an appeal as provided by this
3 article. Any person continuing to sell beer after his or her
4 license has been suspended or revoked, as hereinbefore provided, is
5 guilty of a misdemeanor and, shall be punished as provided in
6 section nineteen of this article.

7 (d) Notwithstanding the provisions of subsection (b), section
8 four, article five, chapter twenty-nine-a of this code, the action
9 of the commissioner in revoking, ~~or~~ suspending, sanctioning or
10 refusing a license ~~shall be~~ is subject to review by the circuit
11 court of Kanawha County ~~West Virginia,~~ or the circuit court in the
12 county where the proposed or licensed premises is located and will
13 or does conduct sales: Provided, That in all other respects, such
14 review shall be conducted in the manner provided in chapter twenty-
15 nine-a of this code. ~~when such licensee may be aggrieved by such~~
16 ~~revocation, or suspension~~ The petition for ~~such~~ review must be
17 filed with ~~said~~ the circuit court within ~~a period of~~ thirty days
18 ~~from and after the date of~~ following entry of the final order of
19 ~~revocation, or~~ suspension, sanction or refusal issued by the
20 commissioner. ~~and any~~ An applicant or licensee obtaining an order
21 for ~~such~~ review ~~shall be~~ is required to pay the costs and fees
22 incident to transcribing, certifying and transmitting the records
23 pertaining to ~~such~~ the matter to the circuit court. An application
24 to the Supreme Court of Appeals of West Virginia for a writ of

1 error from any final order of the circuit court in ~~any such~~ the
2 matter shall be made within thirty days from and after the entry of
3 ~~such~~ the final circuit court order.

4 (e) All ~~such~~ hearings, upon notice to show cause why license
5 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
6 commissioner shall be held in the offices of the commissioner in
7 Charleston, Kanawha County, ~~West Virginia~~, unless otherwise
8 provided by the commissioner in ~~such the~~ notice ~~or agreed upon~~
9 ~~between the licensee and the commissioner;~~ and of hearing. When
10 ~~such the~~ hearing is held elsewhere than in the commissioner's
11 office, the licensee may be required to make deposits of the
12 estimated costs of ~~such the~~ hearing.

13 (f) Whenever ~~any~~ a licensee has been convicted of ~~any~~ an
14 offense constituting a violation of the laws of this state or of
15 the United States relating to nonintoxicating beer, or alcoholic
16 liquor, and ~~such the~~ conviction has become final, the clerk of the
17 court in which ~~such the~~ licensee has been convicted shall forward
18 to the commissioner a certified copy of the order or judgment of
19 conviction if ~~such the~~ clerk has knowledge that the person so
20 convicted is a licensee, together with the certification of ~~such~~
21 the clerk that the conviction is final.

22 (g) In the case of a Class B licensee with multiple licensed
23 locations, the commissioner may, in his or her discretion, revoke,
24 suspend or otherwise sanction, per the provisions of section

1 twenty-three of this article, only the license for the location or
2 locations involved in the unlawful conduct for which licensure is
3 sanctioned, as opposed to all separately licensed locations of ~~such~~
4 the licensee.

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

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

7 **§60-3A-28. Notice of and hearing on revocation; right of appeal;**
8 **appeal procedures.**

9 (a) Before a retail license issued under the authority of this
10 article ~~may be~~ is suspended for a period of more than twenty days,
11 or revoked, the commissioner shall give at least ten days' notice
12 to the retail licensee. Notice shall be in writing, shall state
13 the reason for suspension or revocation, and shall designate a time
14 and place for a hearing where the retail licensee may show cause
15 why the retail license should not be suspended or revoked. Notice
16 shall be sent by certified mail to the address for which the retail
17 license was issued. The retail licensee may, at the time
18 designated for the hearing, produce evidence in his or her behalf
19 and be represented by counsel.

20 (b) ~~Such~~ The hearing and the administrative procedures prior
21 to, during and following the ~~same shall be~~ hearing are governed by
22 and shall be conducted in accordance with the provisions of article
23 five, chapter twenty-nine-a of this code in like manner as if the
24 provisions of article five were fully set forth in this section.

1 (c) Notwithstanding the provisions of subsection (b), section
2 four, article five, chapter twenty-nine-a of this code, any person
3 adversely affected by ~~an a final~~ order entered following ~~such the~~
4 hearing ~~shall have~~ has the right of judicial review ~~thereof in~~
5 ~~accordance with the provisions of section four, article five,~~
6 ~~chapter twenty-nine-a of this code with like effect as if the~~
7 ~~provisions of said section four were fully set forth in this~~
8 ~~section.~~ by the circuit court of Kanawha County or the circuit
9 court in the county where the proposed or licensed premises is
10 located and will or does conduct sales: Provided, That in all
11 other respects, such review shall be conducted in the manner
12 provided in chapter twenty-nine-a of this code. The petition for
13 the review must be filed with the circuit court within thirty days
14 following entry of the final order issued by the commissioner. An
15 applicant or licensee obtaining the review is required to pay the
16 costs and fees incident to transcribing, certifying and
17 transmitting the records pertaining to the matter to circuit court.

18 (d) The judgment of ~~a~~ the circuit court reviewing ~~such the~~
19 order of the commissioner ~~shall be~~ is final unless reversed,
20 vacated or modified on appeal to the Supreme Court of Appeals in
21 accordance with the provisions of section one, article six, chapter
22 twenty-nine-a of this code.

23 (e) Legal counsel and services for the commissioner in all
24 ~~such the~~ proceedings in any circuit court and the Supreme Court of

1 Appeals shall be provided by the Attorney General or his or her
2 assistants and in any proceedings in any circuit court by the
3 prosecuting attorney of that county as well, all without additional
4 compensation.

5 (f) Upon final revocation, the commissioner shall proceed to
6 reissue the retail license by following the procedures set forth
7 herein for the initial issuance of a retail license.

8 **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

9 **§60-7-13a. Hearing on sanctioning of license; notice; review of**
10 **action of commissioner; clerk of court to furnish**
11 **commissioner copy of order or judgment of**
12 **conviction of licensee; assessment of costs;**
13 **procedure for appealing any final order of the**
14 **commissioner which revokes, suspends, sanctions or**
15 **denies the issuance or renewal of any license**
16 **issued under this article.**

17 (a) The commissioner ~~shall~~ may not revoke or suspend ~~any~~ a
18 license issued pursuant to this article or impose ~~any~~ civil
19 penalties authorized ~~thereby~~ under this article unless and until a
20 hearing ~~shall be~~ is held after at least ten days' notice to the
21 licensee of the time and place of ~~such~~ the hearing, which notice
22 shall contain a statement or specification of the charges, grounds
23 or reasons for ~~such~~ the proposed contemplated action, and which
24 ~~shall be~~ is served upon the licensee as notices under the West

1 Virginia Rules of Civil Procedure or by certified mail, return
2 receipt requested, to the address for which license was issued. At
3 ~~which the~~ time and place, ~~so~~ designated in the notice, the licensee
4 ~~shall have~~ has the right to appear and produce evidence in his or
5 her behalf, and to be represented by counsel: *Provided,* That the
6 commissioner may forthwith suspend ~~any such~~ the license when the
7 commissioner believes the public safety will be adversely affected
8 by the licensee's continued operation.

9 **(b)** The commissioner ~~shall have authority to~~ may summon
10 witnesses in the hearing before him or her, and fees of witnesses
11 summoned on behalf of the state in proceedings to sanction licenses
12 shall be treated as a part of the expenses of administration and
13 enforcement. ~~Such~~ The fees shall be the same as those in similar
14 hearings in the circuit courts of this state. The commissioner
15 may, upon a finding of violation, assess a licensee a sum, not to
16 exceed \$150 per violation, to reimburse the commissioner for
17 expenditures of witness fees, court reporter fees and travel costs
18 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
19 transferred to the Alcohol Beverage Control Enforcement Fund
20 created by section thirteen of this article.

21 **(c)** If, at the request of the licensee or on his or her
22 motion, the hearing ~~shall be~~ is continued and ~~shall~~ does not take
23 place on the day fixed by the commissioner in the notice ~~above~~
24 ~~provided for~~ of hearing, then ~~such~~ the licensee's license may be

1 suspended until the hearing and decision of the commissioner, and
2 in the event of revocation or suspension of ~~such~~ the license, upon
3 hearing before the commissioner, the licensee ~~shall not be~~ is not
4 permitted to sell alcoholic liquor or nonintoxicating beer pending
5 an appeal as provided by this article. Any person continuing to
6 sell alcoholic liquor or nonintoxicating beer after his or her
7 license has been suspended or revoked, as ~~hereinbefore~~ provided in
8 this section, is guilty of a misdemeanor and, shall be punished as
9 provided in section twelve of this article.

10 (d) Notwithstanding the provisions of subsection (b), section
11 four, article five, chapter twenty-nine-a of this code, the action
12 of the commissioner in revoking, ~~or~~ suspending, sanctioning or
13 refusing a license ~~shall be~~ is subject to review by the circuit
14 court of Kanawha County ~~West Virginia~~, or the circuit court in the
15 county where the proposed or licensed premises is located and will
16 or does conduct sales: Provided, That in all other respects, such
17 review shall be conducted in the manner provided in chapter twenty-
18 nine-a of this code. ~~when such licensee may be aggrieved by such~~
19 ~~revocation, or suspension~~ The petition for ~~such~~ review must be
20 filed with ~~said~~ the circuit court within ~~a period of~~ thirty days
21 ~~from and after the date of~~ following entry of the final order of
22 revocation, ~~or~~ suspension, sanction or refusal issued by the
23 commissioner. ~~and any~~ A licensee obtaining an order for ~~such~~ the
24 review ~~shall be~~ is required to pay the costs and fees incident to

1 transcribing, certifying and transmitting the records pertaining to
2 ~~such~~ the matter to the circuit court. An application to the
3 Supreme Court of Appeals of West Virginia for a writ of error from
4 any final order of the circuit court in ~~any such~~ the matter shall
5 be made within thirty days from and after the entry of ~~such~~ the
6 final circuit court order.

7 (e) All such hearings, upon notice to show cause why license
8 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
9 commissioner shall be held in the offices of the commissioner in
10 Charleston, Kanawha County, ~~West Virginia~~, unless otherwise
11 provided by the commissioner in ~~such~~ the notice ~~or agreed upon~~
12 ~~between the licensee and the commissioner and~~ of hearing. When ~~such~~
13 the hearing is held elsewhere than in the commissioner's office,
14 the licensee may be required to make deposits of the estimated
15 costs of ~~such~~ the hearing.

16 (f) Whenever any licensee has been convicted of ~~any~~ an offense
17 constituting a violation of the laws of this state or of the United
18 States relating to alcoholic liquor, or nonintoxicating beer, and
19 ~~such~~ the conviction has become final, the clerk of the court in
20 which ~~such~~ the licensee has been convicted shall forward to the
21 commissioner a certified copy of the order or judgment of
22 conviction if ~~such~~ the clerk has knowledge that the person ~~so~~
23 convicted is a licensee, together with the certification of ~~such~~
24 the clerk that the conviction is final. The commissioner shall

1 report violations of any of the provisions of section twelve or
2 twelve-a of this article to the prosecuting attorney of the county
3 in which the licensed premises is located.

4 **ARTICLE 8. SALE OF WINES.**

5 **§60-8-18. Revocation, suspension and other sanctions which may be**
6 **imposed by the commissioner upon the licensee;**
7 **procedure for appealing any final order of the**
8 **commissioner which revokes, suspends, sanctions or**
9 **denies the issuance or renewal of any license issued**
10 **under this article.**

11 (a) The commissioner may on his or her own motion, or shall on
12 the sworn complaint of any person, conduct an investigation to
13 determine if any provisions of this article or any rule promulgated
14 or any order issued by the commissioner has been violated by any
15 licensee. After investigation, the commissioner may impose
16 penalties and sanctions as set forth below.

17 (1) If the commissioner finds that the licensee has violated
18 any provision of this article or any rule promulgated or order
19 issued by the commissioner, or if the commissioner finds the
20 existence of any ground on which a license could have been refused,
21 if the licensee were then applying for a license, the commissioner
22 may:

23 (A) Revoke the licensee's license;

24 (B) Suspend the licensee's license for a period determined by

1 the commissioner not to exceed twelve months; or

2 (C) Place the licensee on probation for a period not to exceed
3 twelve months; and

4 (D) Impose a monetary penalty not to exceed \$1,000 for each
5 violation where revocation is not imposed.

6 (2) If the commissioner finds that a licensee has willfully
7 violated any provision of this article or any rule promulgated or
8 any order issued by the commissioner, the commissioner shall revoke
9 the licensee's license.

10 (b) If a supplier or distributor fails or refuses to keep in
11 effect the bond required by section twenty-nine of this article,
12 the commissioner shall automatically suspend the supplier or
13 distributor's license until the bond required by section twenty of
14 this article is furnished to the commissioner, at which time the
15 commissioner shall vacate the suspension.

16 (c) Whenever the commissioner refuses to issue a license, or
17 suspends or revokes a license, places a licensee on probation or
18 imposes a monetary penalty, he or she shall enter an order to that
19 effect and cause a copy of the order to be served in person or by
20 certified mail, return receipt requested, on the licensee or
21 applicant.

22 (d) ~~Any~~ An applicant or licensee, as the case may be,
23 adversely affected by the order has a right to a hearing before the
24 commissioner if a written demand for hearing is served upon the

1 commissioner within ten days following the receipt of the
2 commissioner's order by the applicant or licensee. Timely service
3 of a demand for a hearing upon the commissioner operates to suspend
4 the execution of the order with respect to which a hearing has been
5 demanded, except an order suspending a license under the provisions
6 of subsection (b) of this section. The person demanding a hearing
7 shall give security for the cost of the hearing in a form and
8 amount as the commissioner may reasonably require. If the person
9 demanding the hearing does not substantially prevail in ~~such~~ the
10 hearing or upon judicial review thereof as provided in subsections
11 (g) and (h) of this section, then the costs of the hearing shall be
12 assessed against him or her by the commissioner and may be
13 collected by an action at law or other proper remedy.

14 (e) Upon receipt of a timely served written demand for a
15 hearing, the commissioner shall immediately set a date for the
16 hearing and notify the person demanding the hearing of the date,
17 time and place of the hearing, which shall be held within thirty
18 days after receipt of the demand. At the hearing the commissioner
19 shall hear evidence and thereafter enter an order supporting by
20 findings of facts, affirming, modifying or vacating the order. Any
21 such order is final unless vacated or modified upon judicial review
22 thereof.

23 (f) The hearing and the administrative procedure prior to,
24 during and following the hearing shall be governed by and in

1 accordance with the provisions of article five, chapter twenty-
2 nine-a of this code.

3 (g) ~~Any~~ Notwithstanding the provisions of subsection (b),
4 section four, article five, chapter twenty-nine-a of this code, an
5 applicant or licensee adversely affected by ~~an~~ a final order
6 entered following a hearing has the right of judicial review of the
7 order ~~in accordance with the provisions of section four, article~~
8 ~~five, chapter twenty-nine-a of this code in the circuit court of~~
9 Kanawha County ~~West Virginia.~~ or the circuit court in the county
10 where the proposed or licensed premises is located and will or does
11 conduct sales: Provided, That in all other respects, such review
12 shall be conducted in the manner provided in chapter twenty-nine-a
13 of this code. The petition for the review must be filed with the
14 circuit court within thirty days following entry of the final order
15 issued by the commissioner. An applicant or licensee obtaining
16 judicial review is required to pay the costs and fees incident to
17 transcribing, certifying and transmitting the records pertaining to
18 the matter to circuit court.

19 (h) The judgment of the ~~Kanawha County~~ circuit court reviewing
20 the order of the commissioner is final unless reversed, vacated or
21 modified on appeal to the Supreme Court of Appeals in accordance
22 with the provisions of section one, article six, chapter twenty-
23 nine-a of this code.

24 (i) Legal counsel and services for the commissioner in all

1 proceedings in any circuit court and the Supreme Court of Appeals
2 shall be provided by the Attorney General or his or her assistants
3 and in any proceedings in any circuit court by the prosecuting
4 attorney of that county as well, all without additional
5 compensation."