

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2946**

4 (By Delegates Skinner, Barrett, Skaff,  
5 Ferns and Fleischauer)

6 (Originating in the Committee on Finance)

7 [March 29, 2013]

8  
9

10 A BILL to amend and reenact §11-16-18 of the Code of West Virginia,  
11 1931, as amended; to amend and reenact §60-3A-18 of said code;  
12 to amend and reenact §60-7-10 and §60-7-12 of said code; and  
13 to amend and reenact §60-8-3 and §60-8-34 of said code, all  
14 relating to licenses for the sale of alcohol; allowing for the  
15 sale of nonintoxicating beer, wine and liquors by licensees on  
16 Sunday mornings within certain hours; authorizing the sale of  
17 alcohol by retail licensees on Sunday within certain hours;  
18 clarifying the restriction on certain prohibited electronic  
19 devices and machines at private club licensees; and effective  
20 date.

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

22 That §11-16-18 of the Code of West Virginia, 1931, as amended,  
23 be amended and reenacted; that §60-3A-18 of said code be amended  
24 and reenacted; §60-7-10 and §60-7-12 of said code be amended and  
25 reenacted; and that §60-8-3 and §60-8-34 of said code be amended  
26 and reenacted, all to read as follows:

1                                               **CHAPTER 11. TAXATION.**

2 **ARTICLE 16. NONINTOXICATING BEER.**

3 **§11-16-18. Unlawful acts of licensees; criminal penalties.**

4           (a) It shall be unlawful:

5           (1) For any licensee, his, her, its or their servants, agents  
6 or employees to sell, give or dispense, or any individual to drink  
7 or consume, in or on any licensed premises or in any rooms directly  
8 connected therewith, nonintoxicating beer or cooler on weekdays  
9 between the hours of two o'clock a.m. and seven o'clock a.m., or  
10 between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ ten  
11 o'clock a.m. on any Sunday, except in private clubs licensed under  
12 the provisions of article seven, chapter sixty of this code, where  
13 the hours shall conform with the hours of sale of alcoholic  
14 liquors;

15          (2) For any licensee, his, her, its or their servants, agents  
16 or employees to sell, furnish or give any nonintoxicating beer as  
17 defined in this article to any person visibly or noticeably  
18 intoxicated or to any person known to be insane or known to be a  
19 habitual drunkard;

20          (3) For any licensee, his, her, its or their servants, agents  
21 or employees to sell, furnish or give any nonintoxicating beer as  
22 defined in this article to any person who is less than twenty-one  
23 years of age;

24          (4) For any distributor to sell or offer to sell, or any  
25 retailer to purchase or receive, any nonintoxicating beer as

1 defined in this article, except for cash and no right of action  
2 shall exist to collect any claims for credit extended contrary to  
3 the provisions of this subdivision. Nothing herein contained shall  
4 prohibit a licensee from crediting to a purchaser the actual price  
5 charged for packages or containers returned by the original  
6 purchaser as a credit on any sale, or from refunding to any  
7 purchaser the amount paid or deposited for the containers when  
8 title is retained by the vendor: *Provided*, That a distributor may  
9 accept an electronic transfer of funds if the transfer of funds is  
10 initiated by an irrevocable payment order on the invoiced amount  
11 for the nonintoxicating beer. The cost of the electronic fund  
12 transfer shall be borne by the retailer and the distributor must  
13 initiate the transfer no later than noon of one business day after  
14 the delivery;

15 (5) For any brewer or distributor or brewpub or his, her, its  
16 or their agents to transport or deliver nonintoxicating beer as  
17 defined in this article to any retail licensee on Sunday;

18 (6) For any brewer or distributor to give, furnish, rent or  
19 sell any equipment, fixtures, signs or supplies directly or  
20 indirectly or through a subsidiary or affiliate to any licensee  
21 engaged in selling products of the brewing industry at retail or to  
22 offer any prize, premium, gift or other similar inducement, except  
23 advertising matter of nominal value, to either trade or consumer  
24 buyers: *Provided*, That a distributor may offer, for sale or rent,  
25 tanks of carbonic gas. Nothing herein contained shall prohibit a  
26 brewer from sponsoring any professional or amateur athletic event

1 or from providing prizes or awards for participants and winners in  
2 any events: *Provided, however,* That no event shall be sponsored  
3 which permits actual participation by athletes or other persons who  
4 are minors, unless specifically authorized by the commissioner;

5 (7) For any licensee to permit in his or her premises any  
6 lewd, immoral or improper entertainment, conduct or practice;

7 (8) For any licensee except the holder of a license to operate  
8 a private club issued under the provisions of article seven,  
9 chapter sixty of this code or a holder of a license or a private  
10 wine restaurant issued under the provisions of article eight of  
11 said chapter to possess a federal license, tax receipt or other  
12 permit entitling, authorizing or allowing the licensee to sell  
13 liquor or alcoholic drinks other than nonintoxicating beer;

14 (9) For any licensee to obstruct the view of the interior of  
15 his or her premises by enclosure, lattice, drapes or any means  
16 which would prevent plain view of the patrons occupying the  
17 premises. The interior of all licensed premises shall be  
18 adequately lighted at all times: *Provided,* That provisions of this  
19 subdivision do not apply to the premises of a Class B retailer, the  
20 premises of a private club licensed under the provisions of article  
21 seven, chapter sixty of this code or the premises of a private wine  
22 restaurant licensed under the provisions of article eight of said  
23 chapter;

24 (10) For any licensee to manufacture, import, sell, trade,  
25 barter, possess or acquiesce in the sale, possession or consumption  
26 of any alcoholic liquors on the premises covered by a license or on

1 premises directly or indirectly used in connection therewith:  
2 *Provided*, That the prohibition contained in this subdivision with  
3 respect to the selling or possessing or to the acquiescence in the  
4 sale, possession or consumption of alcoholic liquors is not  
5 applicable with respect to the holder of a license to operate a  
6 private club issued under the provisions of article seven, chapter  
7 sixty of this code nor shall the prohibition be applicable to a  
8 private wine restaurant licensed under the provisions of article  
9 eight of said chapter insofar as the private wine restaurant is  
10 authorized to serve wine;

11 (11) For any retail licensee to sell or dispense  
12 nonintoxicating beer, as defined in this article, purchased or  
13 acquired from any source other than a distributor, brewer or  
14 manufacturer licensed under the laws of this state;

15 (12) For any licensee to permit loud, boisterous or disorderly  
16 conduct of any kind upon his or her premises or to permit the use  
17 of loud musical instruments if either or any of the same may  
18 disturb the peace and quietude of the community wherein the  
19 business is located: *Provided*, That no licensee may have in  
20 connection with his or her place of business any loudspeaker  
21 located on the outside of the licensed premises that broadcasts or  
22 carries music of any kind;

23 (13) For any person whose license has been revoked, as  
24 provided in this article, to obtain employment with any retailer  
25 within the period of one year from the date of the revocation, or  
26 for any retailer to knowingly employ that person within the

1 specified time;

2       (14) For any distributor to sell, possess for sale, transport  
3 or distribute nonintoxicating beer except in the original  
4 container;

5       (15) For any licensee to knowingly permit any act to be done  
6 upon the licensed premises, the commission of which constitutes a  
7 crime under the laws of this state;

8       (16) For any Class B retailer to permit the consumption of  
9 nonintoxicating beer upon his or her licensed premises;

10       (17) For any Class A licensee, his, her, its or their  
11 servants, agents or employees, or for any licensee by or through  
12 any servants, agents or employees, to allow, suffer or permit any  
13 person less than eighteen years of age to loiter in or upon any  
14 licensed premises; except, however, that the provisions of this  
15 subdivision do not apply where a person under the age of eighteen  
16 years is in or upon the premises in the immediate company of his or  
17 her parent or parents, or where and while a person under the age of  
18 eighteen years is in or upon the premises for the purpose of and  
19 actually making a lawful purchase of any items or commodities  
20 therein sold, or for the purchase of and actually receiving any  
21 lawful service therein rendered, including the consumption of any  
22 item of food, drink or soft drink therein lawfully prepared and  
23 served or sold for consumption on the premises;

24       (18) For any distributor to sell, offer for sale, distribute  
25 or deliver any nonintoxicating beer outside the territory assigned  
26 to any distributor by the brewer or manufacturer of nonintoxicating

1 beer or to sell, offer for sale, distribute or deliver  
2 nonintoxicating beer to any retailer whose principal place of  
3 business or licensed premises is within the assigned territory of  
4 another distributor of such nonintoxicating beer: *Provided*, That  
5 nothing herein is considered to prohibit sales of convenience  
6 between distributors licensed in this state wherein one distributor  
7 sells, transfers or delivers to another distributor a particular  
8 brand or brands for sale at wholesale; and

9       (19) For any licensee or any agent, servant or employee of any  
10 licensee to knowingly violate any rule lawfully promulgated by the  
11 commissioner in accordance with the provisions of chapter twenty-  
12 nine-a of this code.

13       (b) Any person who violates any provision of this article  
14 including, but not limited to, any provision of this section, or  
15 any rule, or order lawfully promulgated by the commissioner, or who  
16 makes any false statement concerning any material fact in  
17 submitting application for license or for a renewal of a license or  
18 in any hearing concerning the revocation thereof, or who commits  
19 any of the acts herein declared to be unlawful is guilty of a  
20 misdemeanor and, upon conviction thereof, shall be punished for  
21 each offense by a fine of not less than \$25 nor more than \$500, or  
22 confined in the county or regional jail for not less than thirty  
23 days nor more than six months, or by both fine and confinement.  
24 Magistrates shall have concurrent jurisdiction with the circuit  
25 court and any other courts having criminal jurisdiction in their  
26 county for the trial of all misdemeanors arising under this

1 article.

2 (c) (1) A Class B licensee that:

3 (A) Has installed a transaction scan device on its licensed  
4 premises; and

5 (B) Can demonstrate that it requires each employee, servant or  
6 agent to verify the age of any individual to whom nonintoxicating  
7 beer is sold, furnished or given away by the use of the transaction  
8 device may not be subject to: (i) Any criminal penalties  
9 whatsoever, including those set forth in subsection (b) of this  
10 section; (ii) any administrative penalties from the commissioner;  
11 or (iii) any civil liability whatsoever for the improper sale,  
12 furnishing or giving away of nonintoxicating beer to an individual  
13 who is less than twenty-one years of age by one of his or her  
14 employees, servants or agents. Any agent, servant or employee who  
15 has improperly sold, furnished or given away nonintoxicating beer  
16 to an individual less than twenty-one years of age is subject to  
17 the criminal penalties of subsection (b) of this section. Any  
18 agent, servant or employee who has improperly sold, furnished or  
19 given away nonintoxicating beer to an individual less than twenty-  
20 one years of age is subject to termination from employment, and the  
21 employer shall have no civil liability for the termination.

22 (2) For purposes of this section, a Class B licensee can  
23 demonstrate that it requires each employee, servant or agent to  
24 verify the age of any individual to whom nonintoxicating beer is  
25 sold by providing evidence: (A) That it has developed a written  
26 policy which requires each employee, servant or agent to verify the



1 age of each individual to whom nonintoxicating beer will be sold,  
2 furnished or given away; (B) that it has communicated this policy  
3 to each employee, servant or agent; and (C) that it monitors the  
4 actions of its employees, servants or agents regarding the sale,  
5 furnishing or giving away of nonintoxicating beer and that it has  
6 taken corrective action for any discovered noncompliance with this  
7 policy.

8       (3) "Transaction scan" means the process by which a person  
9 checks, by means of a transaction scan device, the age and identity  
10 of the cardholder, and "transaction scan device" means any  
11 commercial device or combination of devices used at a point of sale  
12 that is capable of deciphering in an electronically readable format  
13 the information enclosed on the magnetic strip or bar code of a  
14 driver's license or other governmental identity card.

15       (d) Nothing in this article nor any rule or regulation of the  
16 commissioner shall prevent or be considered to prohibit any  
17 licensee from employing any person who is at least eighteen years  
18 of age to serve in the licensee's lawful employ, including the sale  
19 or delivery of nonintoxicating beer as defined in this article.  
20 With the prior approval of the commissioner, a licensee whose  
21 principal business is the sale of food or consumer goods or the  
22 providing of recreational activities, including, but not limited  
23 to, nationally franchised fast food outlets, family-oriented  
24 restaurants, bowling alleys, drug stores, discount stores, grocery  
25 stores and convenience stores, may employ persons who are less than  
26 eighteen years of age but at least sixteen years of age: *Provided,*

1 That the person's duties may not include the sale or delivery of  
2 nonintoxicating beer or alcoholic liquors: *Provided, however,* That  
3 the authorization to employ persons under the age of eighteen years  
4 shall be clearly indicated on the licensee's license.

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

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

7 **§60-3A-18. Days and hours retail licensees may sell liquor.**

8 Retail licensees may not sell liquor on ~~Sundays and Christmas~~  
9 day, or on Sundays between the hours twelve midnight and ten  
10 o'clock a.m., or between the hours of twelve midnight and eight  
11 o'clock a.m. on weekdays and Saturdays, except that wine and  
12 fortified wines may be sold on those days and at such times as  
13 authorized in section thirty-four, article eight of this chapter.

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

15 **§60-7-10. Duties and powers of commissioner.**

16 The commissioner is hereby authorized:

17 (a) To enforce ~~the provisions of~~ this article.

18 (b) To enter the premises of any licensee at reasonable times  
19 for the ~~purpose~~ purposes of inspecting the ~~same~~ the premises and  
20 determining ~~the compliance of said~~ whether the licensee has  
21 complied with ~~the provisions of~~ this article and any rules ~~and~~  
22 ~~regulations~~ promulgated by the commissioner pursuant to ~~the~~  
23 ~~provisions of~~ this article.

24 (c) To ~~promulgate such~~ propose for promulgation reasonable  
25 rules ~~and regulations as may be~~ necessary for the execution and

1 enforcement of ~~the provisions of~~ this article, which may include,  
2 but shall not be limited to, ~~the hours during which licensees may~~  
3 ~~sell alcoholic liquors,~~ and the use, handling, service and sale of  
4 such alcoholic liquors. ~~Such~~ The commissioner shall propose rules  
5 ~~and regulations shall be promulgated~~ for promulgation in accordance  
6 with ~~the provisions of~~ article three, chapter twenty-nine-a of ~~the~~  
7 this code. ~~in like manner as if said article three of said chapter~~  
8 ~~twenty-nine-a were set forth in extenso in this subdivision.~~

9 (d) To issue subpoenas and subpoenas duces tecum for the  
10 purposes of conducting hearings under ~~the provisions of~~ section  
11 thirteen of this article, which ~~subpoenas and subpoenas duces tecum~~  
12 shall be issued in the time, for the fees, and shall be enforced in  
13 the manner specified in section one, article five, chapter  
14 twenty-nine-a of this code ~~with like effect as if said section one~~  
15 ~~were set forth in extenso in this subdivision.~~

16 (e) The authority granted in ~~subdivisions~~ subsections (a),  
17 (b) and (d) of this section may also be exercised by the duly  
18 authorized agents of the commissioner.

19 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

20 (a) It is unlawful for any licensee, or agent, employee or  
21 member thereof, on such licensee's premises to:

22 (1) Sell or offer for sale any alcoholic liquors other than  
23 from the original package or container;

24 (2) Authorize or permit any disturbance of the peace; obscene,  
25 lewd, immoral or improper entertainment, conduct or practice,  
26 gambling or any slot machine, multiple coin console machine,

1 multiple coin console slot machine or device in the nature of a  
2 slot machine, except as provided in article twenty-two-a and  
3 article twenty-two-b, chapter twenty-nine of this code;

4 (3) Sell, give away or permit the sale of, gift to or the  
5 procurement of any nonintoxicating beer, wine or alcoholic liquors  
6 for or to, or permit the consumption of nonintoxicating beer, wine  
7 or alcoholic liquors on the licensee's premises, by any person less  
8 than twenty-one years of age;

9 (4) Sell, give away or permit the sale of, gift to or the  
10 procurement of any nonintoxicating beer, wine or alcoholic liquors,  
11 for or to any person known to be deemed legally incompetent, or for  
12 or to any person who is physically incapacitated due to consumption  
13 of nonintoxicating beer, wine or alcoholic liquor or the use of  
14 drugs;

15 (5) (A) Sell, give or dispense nonintoxicating beer, wine or  
16 alcoholic liquors in or on any licensed premises or in any rooms  
17 directly connected therewith, between the hours of three o'clock  
18 a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on any Sunday, or  
19 between the hours of three o'clock a.m. and seven o'clock a.m. on  
20 any weekday or Saturday;

21 (B) Any patron present on the licensed premises after the sale  
22 or dispensing of nonintoxicating beer, wine or alcoholic liquors  
23 has ceased, as provided in paragraph (A) of this subdivision, shall  
24 have a reasonable time, not to exceed thirty minutes, to vacate the  
25 premises;

26 (6) Permit the consumption by, or serve to, on the licensed

1 premises any nonintoxicating beer, wine or alcoholic liquors,  
2 covered by this article, to any person who is less than twenty-one  
3 years of age;

4 (7) With the intent to defraud, alter, change or misrepresent  
5 the quality, quantity or brand name of any alcoholic liquor;

6 (8) Sell or offer for sale any alcoholic liquor to any person  
7 who is not a duly elected or approved dues paying member in good  
8 standing of said private club or a guest of ~~such~~ a member;

9 (9) Sell, offer for sale, give away, facilitate the use of or  
10 allow the use of carbon dioxide, cyclopropane, ethylene, helium or  
11 nitrous oxide for purposes of human consumption except as  
12 authorized by the commissioner;

13 (10) (A) Employ any person who is less than eighteen years of  
14 age in a position where the primary responsibility for such  
15 employment is to sell, furnish or give nonintoxicating beer, wine  
16 or alcoholic liquors to any person;

17 (B) Employ any person who is between the ages of eighteen and  
18 twenty-one who is not directly supervised by a person aged  
19 twenty-one or over in a position where the primary responsibility  
20 for such employment is to sell, furnish or give nonintoxicating  
21 beer, wine or alcoholic liquors to any person; or

22 (11) Violate any reasonable rule of the commissioner.

23 (b) It is unlawful for any licensee to advertise in any news  
24 media or other means, outside of the licensee's premises, the fact  
25 that alcoholic liquors may be purchased ~~thereat~~ there.

26 (c) Any person who violates any of the foregoing provisions is

1 guilty of a misdemeanor and, upon conviction thereof, shall be  
2 fined not less than \$500 nor more than \$1,000, or ~~imprisoned~~  
3 confined in ~~the county~~ jail for a period not to exceed more than  
4 one year, or both fined and ~~imprisoned~~ confined.

5 **ARTICLE 8. SALE OF WINES.**

6 **§60-8-34. When retail sales prohibited.**

7 It ~~shall be~~ is unlawful for a retailer, farm winery, wine  
8 specialty shop retailer, private wine bed and breakfast, private  
9 wine restaurant or private wine spa licensee, his or her servants,  
10 agents or employees to sell or deliver wine between the hours of  
11 two o'clock a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on Sundays,  
12 or between the hours of two o'clock a.m. and seven o'clock a.m. on  
13 weekdays and Saturdays."