

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 498**

4 (By Senator Palumbo)

5 _____
6 [Originating in the Committee on Government Organization;
7 reported March 27, 2013.]

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10
11 A BILL to amend and reenact §11-16-24 of the Code of West Virginia,
12 1931, as amended; to amend and reenact §60-3A-28 of said code;
13 to amend and reenact §60-7-13a of said code; and to amend and
14 reenact §60-8-18 of said code, all relating to hearing
15 procedures for certain licenses issued by the Alcohol Beverage
16 Control Administration; requiring that appeals from the
17 commissioner's decision regarding disciplinary action against
18 a licensee are to be brought in the circuit court of Kanawha
19 County or the circuit court in the county where the facility
20 subject to the commissioner's decision is located or proposed
21 to be located; and providing that the licensee appealing the
22 commissioner's decision is required to pay the costs and fees
23 incident to transcribing, certifying and transmitting records
24 pertaining to the appeal.

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

26 That §11-16-24 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; that §60-3A-28 of said code be amended
2 and reenacted; that §60-7-13a of said code be amended and
3 reenacted; and that §60-8-18 of said code be amended and reenacted,
4 all to read as follows:

5 **CHAPTER 11. TAXATION.**

6 **ARTICLE 16. NONINTOXICATING BEER.**

7 **§11-16-24. Hearing on sanctioning of license; notice; review of**
8 **action of commissioner; clerk of court to furnish**
9 **commissioner copy of order or judgment of**
10 **conviction of licensee; assessment of costs.**

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

24 (b) The commissioner ~~shall have authority to~~ may summon
25 witnesses in the hearings before him or her, and fees of witnesses

1 summoned on behalf of the state in proceedings to sanction licenses
2 shall be treated as a part of the expenses of administration and
3 enforcement. ~~Such~~ The fees shall be the same as those in similar
4 hearings in the circuit courts of this state. The commissioner
5 may, upon a finding of violation, assess a licensee a sum not to
6 exceed \$150 per violation to reimburse the commissioner for
7 expenditures for witness fees, court reporter fees and travel costs
8 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
9 transferred to the Nonintoxicating Beer Fund created by section
10 twenty-three of this article.

11 (c) If, at the request of the licensee or on his or her
12 motion, the hearing ~~shall be~~ is continued and ~~shall~~ does not take
13 place on the day fixed by the commissioner in the notice ~~above~~
14 ~~provided for~~ of hearing, then ~~such~~ the licensee's license may be
15 suspended until the hearing and decision of the commissioner, and
16 in the event of revocation or suspension of ~~such~~ the license, upon
17 hearing before the commissioner, the licensee ~~shall not be~~ is not
18 permitted to sell beer pending an appeal as provided by this
19 article. Any person continuing to sell beer after his or her
20 license has been suspended or revoked, as hereinbefore provided, is
21 guilty of a misdemeanor and, shall be punished as provided in
22 section nineteen of this article.

23 (d) Notwithstanding the provisions of subsection (b), section
24 four, article five, chapter twenty-nine-a of this code, the action
25 of the commissioner in revoking, ~~or~~ suspending, sanctioning or
26 refusing a license ~~shall be~~ is subject to review by the circuit

1 court of Kanawha County ~~West Virginia,~~ or the circuit court in the
2 county where the facility subject to the commissioner's action is
3 located or proposed to be located; Provided, That in all other
4 respects, such review shall be conducted in the manner provided in
5 chapter twenty-nine-a of this code. ~~when such licensee may be~~
6 ~~aggrieved by such revocation, or suspension~~ The petition for ~~such~~
7 review must be filed with ~~said~~ the circuit court within ~~a period of~~
8 thirty days ~~from and after the date of~~ following entry of the final
9 order of revocation, ~~or~~ suspension, sanction or refusal issued by
10 the commissioner. ~~and any~~ An applicant or licensee obtaining an
11 order for ~~such~~ review ~~shall be~~ is required to pay the costs and
12 fees incident to transcribing, certifying and transmitting the
13 records pertaining to ~~such~~ the matter to the circuit court. An
14 application to the Supreme Court of Appeals of West Virginia for a
15 writ of error from any final order of the circuit court in ~~any such~~
16 the matter shall be made within thirty days from and after the
17 entry of ~~such~~ the final circuit court order.

18 (e) All ~~such~~ hearings, upon notice to show cause why license
19 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
20 commissioner shall be held in the offices of the commissioner in
21 Charleston, Kanawha County, ~~West Virginia,~~ unless otherwise
22 provided by the commissioner in ~~such~~ the notice ~~or agreed upon~~
23 ~~between the licensee and the commissioner; and~~ of hearing. When
24 ~~such~~ the hearing is held elsewhere than in the commissioner's
25 office, the licensee may be required to make deposits of the
26 estimated costs of ~~such~~ the hearing.

1 (f) Whenever ~~any~~ a licensee has been convicted of ~~any~~ an
2 offense constituting a violation of the laws of this state or of
3 the United States relating to nonintoxicating beer, or alcoholic
4 liquor, and ~~such~~ the conviction has become final, the clerk of the
5 court in which ~~such~~ the licensee has been convicted shall forward
6 to the commissioner a certified copy of the order or judgment of
7 conviction if ~~such~~ the clerk has knowledge that the person so
8 convicted is a licensee, together with the certification of ~~such~~
9 the clerk that the conviction is final.

10 (g) In the case of a Class B licensee with multiple licensed
11 locations, the commissioner may, in his or her discretion, revoke,
12 suspend or otherwise sanction, per the provisions of section
13 twenty-three of this article, only the license for the location or
14 locations involved in the unlawful conduct for which licensure is
15 sanctioned, as opposed to all separately licensed locations of ~~such~~
16 the licensee.

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

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

19 **§60-3A-28. Notice of and hearing on revocation.**

20 (a) Before a retail license issued under the authority of this
21 article ~~may be~~ is suspended for a period of more than twenty days,
22 or revoked, the commissioner shall give at least ten days' notice
23 to the retail licensee. Notice shall be in writing, shall state
24 the reason for suspension or revocation, and shall designate a time
25 and place for a hearing where the retail licensee may show cause

1 why the retail license should not be suspended or revoked. Notice
2 shall be sent by certified mail to the address for which the retail
3 license was issued. The retail licensee may, at the time
4 designated for the hearing, produce evidence in his or her behalf
5 and be represented by counsel.

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

11 (c) Notwithstanding the provisions of subsection (b), section
12 four, article five, chapter twenty-nine-a of this code, any person
13 adversely affected by ~~an~~ a final order entered following ~~such the~~
14 hearing ~~shall have~~ has the right of judicial review ~~thereof in~~
15 ~~accordance with the provisions of section four, article five,~~
16 ~~chapter twenty-nine-a of this code with like effect as if the~~
17 ~~provisions of said section four were fully set forth in this~~
18 ~~section.~~ by the circuit court of Kanawha County or the circuit
19 court in the county where the facility subject to the
20 commissioner's action is located or proposed to be located;
21 Provided, That in all other respects, such review shall be
22 conducted in the manner provided in chapter twenty-nine-a of this
23 code. The Petition for the review must be filed with the circuit
24 court within thirty days following entry of the final order issued
25 by the commissioner. An applicant or licensee obtaining the review
26 is required to pay the costs and fees incident to transcribing,

1 certifying and transmitting the records pertaining to the matter to
2 circuit court.

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

8 (e) Legal counsel and services for the commissioner in all
9 ~~such~~ the proceedings in any circuit court and the Supreme Court of
10 Appeals shall be provided by the Attorney General or his or her
11 assistants and in any proceedings in any circuit court by the
12 prosecuting attorney of that county as well, all without additional
13 compensation.

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

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

18 **§60-7-13a. Hearing on sanctioning of license; notice; review of**
19 **action of commissioner; clerk of court to furnish**
20 **commissioner copy of order or judgment of**
21 **conviction of licensee; assessment of costs.**

22 (a) The commissioner ~~shall~~ may not revoke or suspend ~~any~~ a
23 license issued pursuant to this article or impose ~~any~~ civil
24 penalties authorized ~~thereby~~ under this article unless and until a
25 hearing ~~shall be~~ is held after at least ten days' notice to the

1 licensee of the time and place of ~~such~~ the hearing, which notice
2 shall contain a statement or specification of the charges, grounds
3 or reasons for ~~such~~ the proposed contemplated action, and which
4 ~~shall be~~ is served upon the licensee as notices under the West
5 Virginia Rules of Civil Procedure or by certified mail, return
6 receipt requested, to the address for which license was issued. At
7 ~~which~~ the time and place, ~~so~~ designated in the notice, the licensee
8 ~~shall have~~ has the right to appear and produce evidence in his or
9 her behalf, and to be represented by counsel: *Provided*, That the
10 commissioner may forthwith suspend ~~any~~ ~~such~~ the license when the
11 commissioner believes the public safety will be adversely affected
12 by the licensee's continued operation.

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

25 (c) If, at the request of the licensee or on his or her
26 motion, the hearing ~~shall be~~ is continued and ~~shall~~ does not take

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

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

1 to transcribing, certifying and transmitting the records pertaining
2 to ~~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
25 report violations of any of the provisions of section twelve or
26 twelve-a of this article to the prosecuting attorney of the county

1 in which the licensed premises is located.

2 **ARTICLE 8. SALE OF WINES.**

3 **§60-8-18. Revocation, suspension and other sanctions which may be**
4 **imposed by the commissioner upon the licensee;**
5 **procedure upon refusal, revocation, suspension or**
6 **other sanction.**

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

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

19 (A) Revoke the licensee's license;

20 (B) Suspend the licensee's license for a period determined by
21 the commissioner not to exceed twelve months; or

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

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

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

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

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

17 (d) ~~Any~~ An applicant or licensee, as the case may be,
18 adversely affected by the order has a right to a hearing before the
19 commissioner if a written demand for hearing is served upon the
20 commissioner within ten days following the receipt of the
21 commissioner's order by the applicant or licensee. Timely service
22 of a demand for a hearing upon the commissioner operates to suspend
23 the execution of the order with respect to which a hearing has been
24 demanded, except an order suspending a license under the provisions
25 of subsection (b) of this section. The person demanding a hearing
26 shall give security for the cost of the hearing in a form and

1 amount as the commissioner may reasonably require. If the person
2 demanding the hearing does not substantially prevail in ~~such~~ the
3 hearing or upon judicial review thereof as provided in subsections
4 (g) and (h) of this section, then the costs of the hearing shall be
5 assessed against him or her by the commissioner and may be
6 collected by an action at law or other proper remedy.

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

16 (f) The hearing and the administrative procedure prior to,
17 during and following the hearing shall be governed by and in
18 accordance with the provisions of article five, chapter twenty-
19 nine-a of this code.

20 (g) Notwithstanding the provisions of subsection (b), section
21 four, article five, chapter twenty-nine-a of this code, Any an
22 applicant or licensee adversely affected by ~~an~~ a final order
23 entered following a hearing has the right of judicial review of the
24 order ~~in accordance with the provisions of section four, article~~
25 ~~five, chapter twenty-nine-a of this code~~ in the circuit court of
26 Kanawha County ~~West Virginia.~~ or the circuit court in the county

1 where the facility subject to the commissioner's action is located
2 or proposed to be located; Provided, That in all other respects,
3 such review shall be conducted in the manner provided in chapter
4 twenty-nine-a of this code. The petition for the review must be
5 filed with the circuit court within thirty days following entry of
6 the final order issued by the commissioner. An applicant or
7 licensee obtaining judicial review is required to pay the costs and
8 fees incident to transcribing, certifying and transmitting the
9 records pertaining to the matter to circuit court.

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

15 (i) Legal counsel and services for the commissioner in all
16 proceedings in any circuit court and the Supreme Court of Appeals
17 shall be provided by the Attorney General or his or her assistants
18 and in any proceedings in any circuit court by the prosecuting
19 attorney of that county as well, all without additional
20 compensation.