

H. B. 2356

(By Delegates D. Poling, Caputo, Hamilton,
Barill and Ellem)

[Introduced February 13, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-16-18 of the Code of West Virginia,
1931, as amended; and to amend and reenact §60-6-8 of said
code, all relating to prohibiting the sale of beer and wine at
self-scan registers with application of current penalties
associated with other offenses of retail licensees of
nonintoxicating beer, beer and wine.

Be it enacted by the Legislature of West Virginia:

That §11-16-18 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §60-6-8 of said code be amended
and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

(a) It shall be unlawful:

(1) For any a licensee, ~~his, her, its or their servants,~~
including his or her agents or employees, to sell, give or dispense

1 ~~or any individual to drink or consume,~~ for a person to drink in or
2 on any licensed premises or in any ~~rooms directly connected~~
3 ~~therewith,~~ connecting rooms, nonintoxicating beer or cooler ~~on~~
4 ~~weekdays~~ between the hours of two o'clock a.m. and seven o'clock
5 a.m. ~~or on weekdays, including Saturdays, and~~ between the hours of
6 two o'clock a.m. and one o'clock p.m., on ~~any Sunday,~~ Sundays
7 except in private clubs licensed under the provisions of article
8 seven, chapter sixty of this code, where the hours shall conform
9 with the hours of sale of alcoholic liquors;

10 (2) For ~~any a~~ licensee, ~~his her, its or their servants,~~
11 including his or her agents or employees, to sell, furnish or give
12 ~~any~~ nonintoxicating beer as defined in this article to ~~any a~~ person
13 visibly or noticeably intoxicated or to ~~any a~~ person known to be
14 insane or ~~known to be a~~ an habitual drunkard;

15 (3) For ~~any a~~ licensee, ~~his, her, its or their servants,~~
16 including his or her agents or employees, to sell, furnish or give
17 ~~any~~ nonintoxicating beer as defined in this article to ~~any a~~ person
18 ~~who is~~ less than twenty-one years of age;

19 (4) For ~~any a~~ distributor to sell or offer to sell or ~~any a~~
20 retailer to purchase or receive ~~any~~ nonintoxicating beer as defined
21 in this article, except for cash. ~~and~~ No right of action ~~shall~~
22 ~~exist~~ exists to collect ~~any~~ claims for credit extended contrary to
23 the provisions of this subdivision. Nothing herein ~~contained shall~~
24 ~~prohibit~~ prohibits a licensee from crediting to a purchaser the

1 actual price charged for packages or containers returned by the
2 original purchaser as a credit on any sale or from refunding to ~~any~~
3 a purchaser the amount paid or deposited for the containers when
4 title is retained by the vendor. ~~Provided, That~~ A distributor may
5 accept an electronic transfer of funds if the transfer of funds is
6 initiated by an irrevocable payment order on the invoiced amount
7 for the nonintoxicating beer. The cost of the electronic fund
8 transfer ~~shall be~~ is borne by the retailer and the distributor must
9 initiate the transfer no later than noon of one business day after
10 the delivery;

11 (5) For ~~any~~ a brewer or distributor or brewpub or his, her,
12 its or their agents to transport or deliver nonintoxicating beer as
13 defined in this article to ~~any~~ a retail licensee on Sunday;

14 (6) For ~~any~~ a brewer or distributor to give, furnish, rent or
15 sell any equipment, fixtures, signs or supplies directly or
16 indirectly or through a subsidiary or affiliate to ~~any~~ a licensee
17 engaged in selling products of the brewing industry at retail or to
18 offer any prize, premium, gift or other similar inducement, except
19 advertising matter of nominal value, to either trade or consumer
20 buyers. ~~Provided, That~~ A distributor may offer, for sale or rent,
21 tanks of carbonic gas. Nothing herein ~~contained shall prohibit~~
22 prohibits a brewer from sponsoring any professional or amateur
23 athletic event or from providing prizes or awards for participants
24 and winners in any events ~~Provided, however,~~ except that no event

1 ~~shall~~ may be sponsored which permits actual participation by
2 athletes or other persons who are minors, unless specifically
3 authorized by the commissioner;

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

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

14 (9) For ~~any~~ a 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~~ a licensee to manufacture, import, sell, trade,

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

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

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

1 (13) For ~~any~~ a person whose license has been revoked, as
2 provided in this article, to obtain employment with ~~any~~ a retailer
3 within ~~the period of~~ one year from the date of ~~the~~ revocation or
4 for ~~any~~ a retailer to knowingly employ that person within the
5 specified time;

6 (14) For ~~any~~ a distributor to sell, possess for sale,
7 transport or distribute nonintoxicating beer except in the original
8 container;

9 (15) For ~~any~~ a licensee to knowingly permit ~~any~~ an act to be
10 done upon the licensed premises ~~the commission of~~ which constitutes
11 a crime under the laws of this state;

12 (16) For ~~any~~ a Class B retailer to permit the consumption of
13 nonintoxicating beer upon his or her licensed premises;

14 (17) For ~~any~~ a Class A licensee, ~~his, her, its or their~~
15 ~~servants,~~ including his or her agents or employees, or for ~~any~~ a
16 licensee, ~~by or through any servants,~~ including his or her agents
17 or employees, to allow ~~suffer or permit~~ any a person less than
18 eighteen years of age to loiter in ~~or upon~~ any licensed premises.
19 ~~except, however, that~~ The provisions of this subdivision do not
20 apply where a person under the age of eighteen years is in ~~or upon~~
21 the premises in the immediate company of his or her parent or
22 parents; ~~or where and~~ while a person under the age of eighteen
23 years is in ~~or upon~~ the premises for the purpose of and actually
24 making a lawful purchase of ~~any items or commodities~~ items therein

1 sold; or, for the purchase of and actually receiving any lawful
2 service therein rendered including the consumption of any item of
3 food, drink or soft drink ~~therein~~ lawfully prepared and served or
4 sold for consumption on the premises;

5 (18) For ~~any~~ a distributor to sell, offer for sale, distribute
6 or deliver ~~any~~ nonintoxicating beer outside the territory assigned
7 to ~~any~~ a distributor by the brewer or manufacturer of
8 nonintoxicating beer or to sell, offer for sale, distribute or
9 deliver nonintoxicating beer to ~~any~~ a retailer whose principal
10 place of business or licensed premises is within the assigned
11 territory of another distributor of ~~such~~ the nonintoxicating beer.
12 ~~Provided, That Nothing herein is considered to prohibit~~ Nothing
13 herein prohibits sales of convenience between distributors licensed
14 in this state wherein one distributor sells, transfers or delivers
15 to another distributor a particular brand or brands for sale at
16 wholesale; ~~and~~

17 (19) For ~~any~~ a licensee or ~~any~~ an agent, servant or employee
18 of ~~any~~ a licensee to knowingly violate any rule lawfully
19 promulgated by the commissioner in accordance with the provisions
20 of chapter twenty-nine-a of this code; and

21 (20) For a licensee to sell nonintoxicating beer by means
22 of a self-scanning cash register or electronic cash register
23 capable of recovering stored information related to the sale price
24 of individual retail items and operated on a self-service basis by

1 a consumer.

2 (b) ~~Any~~ A person who violates any provision of this article
3 including, but not limited to, any provision of this section or any
4 rule or order lawfully promulgated by the commissioner, or who
5 makes ~~any~~ a false statement concerning any material fact in
6 submitting application for license or for a renewal of a license or
7 in ~~any~~ a hearing concerning the revocation thereof, or who commits
8 any of the acts herein declared to be unlawful, is guilty of a
9 misdemeanor and, upon conviction thereof, shall be ~~punished for~~
10 ~~each offense by a fine of~~ fined not less than ~~twenty-five~~ \$25 nor
11 more than \$500, or confined in ~~the county or regional~~ jail for not
12 less than thirty days nor more than six months, or by both fine and
13 ~~confinement.~~ confined. Magistrates shall have concurrent
14 jurisdiction with the circuit court and any other courts having
15 criminal jurisdiction in their county for the trial of all
16 misdemeanors arising under this article.

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

18 (A) Has installed a transaction scan device on its licensed
19 premises; and

20 (B) Can demonstrate ~~that~~ it requires each employee, servant or
21 agent to verify the age of ~~any individual~~ individuals to whom
22 nonintoxicating beer is sold, furnished or given away by the use of
23 the transaction device may not be subject to the following:

24 (i) Any criminal penalties whatsoever, including those set

1 forth in subsection (b) of this section;

2 (ii) Any administrative penalties from the commissioner; or

3 (iii) Any civil liability whatsoever for the improper sale,
4 furnishing or giving away of nonintoxicating beer to an individual
5 who is less than twenty-one years of age. ~~by one of his or her~~
6 ~~employees, servants or agents.~~ Any

7 (2) An agent, servant or employee who has improperly sold,
8 furnished or given away nonintoxicating beer to an individual less
9 than twenty-one years of age is subject to the criminal penalties
10 of subsection (b) of this section. ~~Any~~ An agent, servant or
11 employee who has improperly sold, furnished or given away
12 nonintoxicating beer to an individual less than twenty-one years of
13 age is subject to termination from employment and the employer
14 ~~shall have~~ has no civil liability for the termination.

15 ~~(2)~~ (3) For purposes of this section, a Class B licensee can
16 demonstrate that it requires each employee, servant or agent to
17 verify the age of ~~any individual~~ individuals to whom
18 nonintoxicating beer is sold by providing evidence that:

19 (A) ~~That~~ It has developed a written policy ~~which requires~~
20 requiring each employee, servant or agent to verify the age of each
21 individual to whom nonintoxicating beer will be sold, furnished or
22 given away;

23 (B) ~~that~~ It has communicated this policy to each employee,
24 servant or agent; and

1 (C) ~~that~~ It monitors the actions of its employees, servants or
2 agents regarding the sale, furnishing or giving away of
3 nonintoxicating beer and ~~that~~ it has taken corrective action for
4 any discovered noncompliance with this policy.

5 ~~(3)~~ (4) "Transaction scan" means the process by which a person
6 checks, by means of a transaction scan device, the age and identity
7 of the cardholder and "transaction scan device" means any
8 commercial device or combination of devices used at a point of sale
9 that is capable of deciphering in an electronically readable format
10 the information enclosed on the magnetic strip or bar code of a
11 driver's license or other governmental identity card.

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

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

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

6 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

7 **§60-6-8. Unlawful sale or possession by licensee.**

8 A licensed person shall not:

9 (1) Sell alcoholic liquors of a kind other than that which
10 such license or this chapter authorizes him or her to sell;

11 (2) Sell beer to which wine, spirits, or alcohol has been
12 added;

13 (3) Sell wine to which other alcoholic spirits have been added
14 ~~otherwise~~ other than as required in the manufacture thereof under
15 regulations of the commission;

16 (4) Sell alcoholic liquors to a person specified in section
17 twenty-two, article three of this chapter;

18 (5) Sell alcoholic liquors except as authorized by his or her
19 license;

20 (6) Sell any alcoholic liquor when forbidden by the provisions
21 of this chapter;

22 (7) Keep on the premises covered by his or her license
23 alcoholic liquor other than that which he or she is authorized to

1 sell by such license or by this chapter; or

2 (8) Sell beer or wine by means of a self-scanning cash
3 register or electronic cash register capable of recovering stored
4 information related to the sale price of individual retail items
5 and operated on a self-service basis by a consumer.

6 A person who violates any provision of this section shall be
7 guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not less than \$50 nor more than \$500, or confined in jail not
9 less than thirty days nor more than one year, or both fined ~~such~~
10 ~~fine and imprisonment for the first offense.~~ and confined. Upon
11 conviction of a second or subsequent offense, the court may in its
12 discretion impose a penalty of confinement in ~~the penitentiary a~~
13 correctional facility for a period not to exceed three years except
14 that this discretion does not apply to the sale of beer or wine by
15 means of a self-scanning or electronic cash register as described
16 in this section.

NOTE: The purpose of this bill is to prohibit the sale of beer and wine at self-scan registers and to apply penalties associated with other offenses of retail licensees of nonintoxicating beer, beer and wine.

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