

1 **H. B. 3141**

2
3 (By Delegates Skaff, McCuskey, Sponaugle,
4 Stowers, and R. Phillips)

5 (By Request of the Alcohol Beverage Control Administration)

6 [Introduced March 25, 2013; referred to the
7 Committee on the Judiciary.]

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9
10 A BILL to amend and reenact §11-16-24 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §60-3A-28 of said code;
12 to amend and reenact §60-7-13a of said code; and to amend and
13 reenact §60-8-18 of said code, all relating to providing
14 consistency for the location of the Alcohol Beverage Control
15 Administration's appeal hearings; and providing that appeals
16 from the commissioner's decision are to be brought in the
17 circuit court of Kanawha County.

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

19 That §11-16-24 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted; that §60-3A-28 of said code be amended
21 and reenacted; that §60-7-13a of said code be amended and
22 reenacted; and that §60-8-18 of said code be amended and reenacted,
23 all to read as follows:

24 **CHAPTER 11. TAXATION.**

1 **ARTICLE 16. NONINTOXICATING BEER.**

2 **§11-16-24. Hearing on sanctioning of license; notice; review of**
3 **action of commissioner; clerk of court to furnish**
4 **commissioner copy of order or judgment of**
5 **conviction of licensee; assessment of costs.**

6 The commissioner ~~shall~~ may not revoke ~~nor~~ or suspend ~~any~~ a
7 license issued pursuant to this article or impose ~~any~~ a civil
8 ~~penalties~~ a civil penalty authorized ~~thereby~~ under this article
9 unless and until a hearing ~~shall be~~ is held after at least ten
10 days' notice to the licensee of the time and place of ~~such~~ the
11 hearing, which notice shall contain a statement or specification of
12 the charges, grounds or reasons for ~~such~~ the proposed contemplated
13 action, and which ~~shall be~~ is served upon the licensee as notices
14 under the West Virginia Rules of Civil Procedure or by certified
15 mail, return receipt requested, to the address for which license
16 was issued; at which time and place, so designated in the notice,
17 the licensee ~~shall have~~ has the right to appear and produce
18 evidence in his or her behalf, and to be represented by counsel.

19 The commissioner ~~shall have authority to~~ may summon witnesses
20 in the hearings before him or her, and fees of witnesses summoned
21 on behalf of the state in proceedings to sanction licenses shall be
22 treated as a part of the expenses of administration and
23 enforcement. ~~Such~~ The fees shall be the same as those in similar

1 hearings in the circuit courts of this state. The commissioner
2 may, upon a finding of violation, assess a licensee a sum not to
3 exceed \$150 per violation to reimburse the commissioner for
4 expenditures for witness fees, court reporter fees and travel costs
5 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
6 transferred to the Nonintoxicating Beer Fund created by section
7 twenty-three of this article.

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

20 The action of the commissioner in revoking, ~~or~~ suspending,
21 sanctioning or refusing a license ~~shall be~~ is subject to review
22 only by the circuit court of Kanawha County, ~~West Virginia,~~
23 notwithstanding the provisions of subsection (b), section four,

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

17 All ~~such~~ hearings, upon notice to show cause why license
18 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
19 commissioner shall be held in the offices of the commissioner in
20 Charleston, Kanawha County, ~~West Virginia~~, unless otherwise
21 provided by the commissioner in ~~such the~~ notice ~~or agreed upon~~
22 ~~between the licensee and the commissioner; and~~ of hearing. When
23 ~~such the~~ hearing is held elsewhere than in the commissioner's

1 office, the licensee may be required to make deposits of the
2 estimated costs of ~~such~~ the hearing.

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

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

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

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

21 **§60-3A-28. Notice of and hearing on revocation.**

22 (a) Before a retail license issued under the authority of this
23 article ~~may be~~ is suspended for a period of more than twenty days,

1 or revoked, the commissioner shall give at least ten days' notice
2 to the retail licensee. Notice shall be in writing, shall state
3 the reason for suspension or revocation, and shall designate a time
4 and place for a hearing where the retail licensee may show cause
5 why the retail license should not be suspended or revoked. Notice
6 shall be sent by certified mail to the address for which the retail
7 license was issued. The retail licensee may, at the time
8 designated for the hearing, produce evidence in his or her behalf
9 and be represented by counsel.

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

15 (c) Any person adversely affected by ~~an~~ a final order entered
16 following ~~such the~~ hearing ~~shall have~~ has the right of judicial
17 review ~~thereof in accordance with the provisions of section four,~~
18 ~~article five, chapter twenty-nine-a of this code with like effect~~
19 ~~as if the provisions of said section four were fully set forth in~~
20 ~~this section.~~ by only the circuit court of Kanawha County,
21 notwithstanding the provisions of subsection (b), section four,
22 article five, chapter twenty-nine-a of this code, and in all other
23 respects in the manner provided in chapter twenty-nine-a of this

1 code. Petition for the review must be filed with the circuit court
2 of Kanawha County, within thirty days from and after the date of
3 the final order issued by the commissioner. An applicant or
4 licensee obtaining the review is required to pay the costs and fees
5 incident to transcribing, certifying and transmitting the records
6 pertaining to the matter to circuit court.

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

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

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

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

22 **§60-7-13a. Hearing on sanctioning of license; notice; review of**
23 **action of commissioner; clerk of court to furnish**

1 **commissioner copy of order or judgment of**
2 **conviction of licensee; assessment of costs.**

3 The commissioner ~~shall~~ may not revoke or suspend ~~any a~~ a license
4 issued pursuant to this article or impose ~~any~~ civil penalties
5 authorized ~~thereby~~ under this article unless and until a hearing
6 ~~shall be~~ is held after at least ten days' notice to the licensee of
7 the time and place of ~~such~~ the hearing, which notice shall contain
8 a statement or specification of the charges, grounds or reasons for
9 ~~such~~ the proposed contemplated action, and which ~~shall be~~ is served
10 upon the licensee as notices under the West Virginia Rules of Civil
11 Procedure or by certified mail, return receipt requested, to the
12 address for which license was issued. At ~~which~~ the time and place,
13 ~~so~~ designated in the notice, the licensee ~~shall have~~ has the right
14 to appear and produce evidence in his or her behalf, and to be
15 represented by counsel: *Provided,* That the commissioner may
16 forthwith suspend ~~any such~~ the license when the commissioner
17 believes the public safety will be adversely affected by the
18 licensee's continued operation.

19 The commissioner ~~shall have authority to~~ may summon witnesses
20 in the hearing before him or her, and fees of witnesses summoned on
21 behalf of the state in proceedings to sanction licenses shall be
22 treated as a part of the expenses of administration and
23 enforcement. ~~Such~~ The fees shall be the same as those in similar

1 hearings in the circuit courts of this state. The commissioner
2 may, upon a finding of violation, assess a licensee a sum, not to
3 exceed \$150 per violation, to reimburse the commissioner for
4 expenditures of witness fees, court reporter fees and travel costs
5 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
6 transferred to the Alcohol Beverage Control Enforcement Fund
7 created by section thirteen of this article.

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

21 The action of the commissioner in revoking, ~~or~~ suspending,
22 sanctioning or refusing a license ~~shall be~~ is subject to review
23 only by the circuit court of Kanawha County ~~West Virginia~~,

1 notwithstanding the provisions of subsection (b), section four,
2 article five, chapter twenty-nine-a of this code, and in all other
3 respects in the manner provided in chapter twenty-nine-a of this
4 code, when ~~such~~ the licensee ~~may be~~ is aggrieved by ~~such~~ the
5 revocation, ~~or~~ suspension, sanction or refusal. Petition for ~~such~~
6 the review must be filed with ~~said~~ the circuit court of Kanawha
7 County within ~~a period of~~ thirty days from and after the date of
8 the final order of revocation, ~~or~~ suspension, sanction or refusal
9 issued by the commissioner. ~~and any~~ A licensee obtaining an order
10 for ~~such~~ the review ~~shall be~~ is required to pay the costs and fees
11 incident to transcribing, certifying and transmitting the records
12 pertaining to ~~such~~ the matter to the circuit court. An application
13 to the Supreme Court of Appeals of West Virginia for a writ of
14 error from any final order of the circuit court in ~~any such~~ the
15 matter shall be made within thirty days from and after the entry of
16 ~~such~~ the final circuit court order.

17 All such hearings, upon notice to show cause why license
18 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
19 commissioner shall be held in the offices of the commissioner in
20 Charleston, Kanawha County, ~~West Virginia~~, unless otherwise
21 provided by the commissioner in ~~such~~ the notice ~~or agreed upon~~
22 ~~between the licensee and the commissioner and~~ of hearing. When ~~such~~
23 the hearing is held elsewhere than in the commissioner's office,

1 the licensee may be required to make deposits of the estimated
2 costs of ~~such~~ the hearing.

3 Whenever any licensee has been convicted of ~~any~~ an offense
4 constituting a violation of the laws of this state or of the United
5 States relating to alcoholic liquor, or nonintoxicating beer, and
6 ~~such~~ the conviction has become final, the clerk of the court in
7 which ~~such~~ the licensee has been convicted shall forward to the
8 commissioner a certified copy of the order or judgment of
9 conviction if ~~such~~ the clerk has knowledge that the person ~~so~~
10 convicted is a licensee, together with the certification of ~~such~~
11 the clerk that the conviction is final. The commissioner shall
12 report violations of any of the provisions of section twelve or
13 twelve-a of this article to the prosecuting attorney of the county
14 in which the licensed premises is located.

15 **ARTICLE 8. SALE OF WINES.**

16 **§60-8-18. Revocation, suspension and other sanctions which may be**
17 **imposed by the commissioner upon the licensee;**
18 **procedure upon refusal, revocation, suspension or**
19 **other sanction.**

20 (a) The commissioner may on his or her own motion, or shall on
21 the sworn complaint of any person, conduct an investigation to
22 determine if any provisions of this article or any rule promulgated
23 or any order issued by the commissioner has been violated by any

1 licensee. After investigation, the commissioner may impose
2 penalties and sanctions as set forth below.

3 (1) If the commissioner finds that the licensee has violated
4 any provision of this article or any rule promulgated or order
5 issued by the commissioner, or if the commissioner finds the
6 existence of any ground on which a license could have been refused,
7 if the licensee were then applying for a license, the commissioner
8 may:

9 (A) Revoke the licensee's license;

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

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

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

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

20 (b) If a supplier or distributor fails or refuses to keep in
21 effect the bond required by section twenty-nine of this article,
22 the commissioner shall automatically suspend the supplier or
23 distributor's license until the bond required by section twenty of

1 this article is furnished to the commissioner, at which time the
2 commissioner shall vacate the suspension.

3 (c) Whenever the commissioner refuses to issue a license, or
4 suspends or revokes a license, places a licensee on probation or
5 imposes a monetary penalty, he or she shall enter an order to that
6 effect and cause a copy of the order to be served in person or by
7 certified mail, return receipt requested, on the licensee or
8 applicant.

9 (d) ~~Any~~ An applicant or licensee, as the case may be,
10 adversely affected by the order has a right to a hearing before the
11 commissioner if a written demand for hearing is served upon the
12 commissioner within ten days following the receipt of the
13 commissioner's order by the applicant or licensee. Timely service
14 of a demand for a hearing upon the commissioner operates to suspend
15 the execution of the order with respect to which a hearing has been
16 demanded, except an order suspending a license under the provisions
17 of subsection (b) of this section. The person demanding a hearing
18 shall give security for the cost of the hearing in a form and
19 amount as the commissioner may reasonably require. If the person
20 demanding the hearing does not substantially prevail in ~~such~~ the
21 hearing or upon judicial review thereof as provided in subsections
22 (g) and (h) of this section, then the costs of the hearing shall be
23 assessed against him or her by the commissioner and may be

1 collected by an action at law or other proper remedy.

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

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

15 (g) ~~Any~~ An applicant or licensee adversely affected by ~~an~~ a
16 final order entered following a hearing has the right of judicial
17 review of the order ~~in accordance with the provisions of section~~
18 ~~four, article five, chapter twenty-nine-a of this code in the~~
19 ~~circuit court of Kanawha County, West Virginia.~~ by only the circuit
20 court of Kanawha County, notwithstanding the provisions of
21 subsection (b), section four, article five, chapter twenty-nine-a
22 of this code, and in all other respects in the manner provided in
23 chapter twenty-nine-a of this code. Petition for the review must be

1 filed with the circuit court of Kanawha County, within thirty days
2 from and after the date of the final order issued by the
3 commissioner. An applicant or licensee obtaining judicial review
4 is required to pay the costs and fees incident to transcribing,
5 certifying and transmitting the records pertaining to the matter to
6 circuit court.

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

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

NOTE: The purpose of this bill is to make consistent the Alcohol Beverage Control Administration's hearing and appeal requirements among the various statutes for beer, liquor and wine. The bill provides the right to appeal final orders of the commissioner to the Kanawha County circuit court.

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