

COMMITTEE SUBSTITUTE

FOR

H. B. 2946

(BY DELEGATE(S) SKINNER, BARRETT, SKAFF,
FERNS AND FLEISCHAUER)

(Originating in the Committee on Finance)
[March 29, 2013]

A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-18 of said code; to amend and reenact §60-7-10 and §60-7-12 of said code; and to amend and reenact §60-8-3 and §60-8-34 of said code, all relating to licenses for the sale of alcohol; allowing for the sale of nonintoxicating beer, wine and liquors by licensees on Sunday mornings within certain hours; authorizing the sale of alcohol by retail licensees on Sunday within certain hours; clarifying the

restriction on certain prohibited electronic devices and machines at private club licensees; and effective date.

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; that §60-3A-18 of said code be amended and reenacted; §60-7-10 and §60-7-12 of said code be amended and reenacted; and that §60-8-3 and §60-8-34 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.

- 1 (a) It shall be unlawful:
- 2 (1) For any licensee, his, her, its or their servants, agents or
- 3 employees to sell, give or dispense, or any individual to drink or
- 4 consume, in or on any licensed premises or in any rooms directly
- 5 connected therewith, nonintoxicating beer or cooler on weekdays
- 6 between the hours of two o'clock a.m. and seven o'clock a.m.,
- 7 or between the hours of two o'clock a.m. and ~~one o'clock p.m.~~
- 8 ten o'clock a.m. on any Sunday, except in private clubs licensed
- 9 under the provisions of article seven, chapter sixty of this code,

10 where the hours shall conform with the hours of sale of alcoholic
11 liquors;

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

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

21 (4) For any distributor to sell or offer to sell, or any retailer
22 to purchase or receive, any nonintoxicating beer as defined in
23 this article, except for cash and no right of action shall exist to
24 collect any claims for credit extended contrary to the provisions
25 of this subdivision. Nothing herein contained shall prohibit a
26 licensee from crediting to a purchaser the actual price charged
27 for packages or containers returned by the original purchaser as
28 a credit on any sale, or from refunding to any purchaser the
29 amount paid or deposited for the containers when title is retained

30 by the vendor: *Provided*, That a distributor may accept an
31 electronic transfer of funds if the transfer of funds is initiated by
32 an irrevocable payment order on the invoiced amount for the
33 nonintoxicating beer. The cost of the electronic fund transfer
34 shall be borne by the retailer and the distributor must initiate the
35 transfer no later than noon of one business day after the delivery;

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

39 (6) For any brewer or distributor to give, furnish, rent or sell
40 any equipment, fixtures, signs or supplies directly or indirectly
41 or through a subsidiary or affiliate to any licensee engaged in
42 selling products of the brewing industry at retail or to offer any
43 prize, premium, gift or other similar inducement, except
44 advertising matter of nominal value, to either trade or consumer
45 buyers: *Provided*, That a distributor may offer, for sale or rent,
46 tanks of carbonic gas. Nothing herein contained shall prohibit a
47 brewer from sponsoring any professional or amateur athletic
48 event or from providing prizes or awards for participants and
49 winners in any events: *Provided, however*, That no event shall be

50 sponsored which permits actual participation by athletes or other
51 persons who are minors, unless specifically authorized by the
52 commissioner;

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

55 (8) For any licensee except the holder of a license to operate
56 a private club issued under the provisions of article seven,
57 chapter sixty of this code or a holder of a license or a private
58 wine restaurant issued under the provisions of article eight of
59 said chapter to possess a federal license, tax receipt or other
60 permit entitling, authorizing or allowing the licensee to sell
61 liquor or alcoholic drinks other than nonintoxicating beer;

62 (9) For any licensee to obstruct the view of the interior of his
63 or her premises by enclosure, lattice, drapes or any means which
64 would prevent plain view of the patrons occupying the premises.
65 The interior of all licensed premises shall be adequately lighted
66 at all times: *Provided*, That provisions of this subdivision do not
67 apply to the premises of a Class B retailer, the premises of a
68 private club licensed under the provisions of article seven,
69 chapter sixty of this code or the premises of a private wine

70 restaurant licensed under the provisions of article eight of said
71 chapter;

72 (10) For any licensee to manufacture, import, sell, trade,
73 barter, possess or acquiesce in the sale, possession or
74 consumption of any alcoholic liquors on the premises covered by
75 a license or on premises directly or indirectly used in connection
76 therewith: *Provided*, That the prohibition contained in this
77 subdivision with respect to the selling or possessing or to the
78 acquiescence in the sale, possession or consumption of alcoholic
79 liquors is not applicable with respect to the holder of a license to
80 operate a private club issued under the provisions of article
81 seven, chapter sixty of this code nor shall the prohibition be
82 applicable to a private wine restaurant licensed under the
83 provisions of article eight of said chapter insofar as the private
84 wine restaurant is authorized to serve wine;

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

89 (12) For any licensee to permit loud, boisterous or disorderly
90 conduct of any kind upon his or her premises or to permit the use

91 of loud musical instruments if either or any of the same may
92 disturb the peace and quietude of the community wherein the
93 business is located: *Provided*, That no licensee may have in
94 connection with his or her place of business any loudspeaker
95 located on the outside of the licensed premises that broadcasts or
96 carries music of any kind;

97 (13) For any person whose license has been revoked, as
98 provided in this article, to obtain employment with any retailer
99 within the period of one year from the date of the revocation, or
100 for any retailer to knowingly employ that person within the
101 specified time;

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

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

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

109 (17) For any Class A licensee, his, her, its or their servants,
110 agents or employees, or for any licensee by or through any

111 servants, agents or employees, to allow, suffer or permit any
112 person less than eighteen years of age to loiter in or upon any
113 licensed premises; except, however, that the provisions of this
114 subdivision do not apply where a person under the age of
115 eighteen years is in or upon the premises in the immediate
116 company of his or her parent or parents, or where and while a
117 person under the age of eighteen years is in or upon the premises
118 for the purpose of and actually making a lawful purchase of any
119 items or commodities therein sold, or for the purchase of and
120 actually receiving any lawful service therein rendered, including
121 the consumption of any item of food, drink or soft drink therein
122 lawfully prepared and served or sold for consumption on the
123 premises;

124 (18) For any distributor to sell, offer for sale, distribute or
125 deliver any nonintoxicating beer outside the territory assigned to
126 any distributor by the brewer or manufacturer of nonintoxicating
127 beer or to sell, offer for sale, distribute or deliver nonintoxicating
128 beer to any retailer whose principal place of business or licensed
129 premises is within the assigned territory of another distributor of
130 such nonintoxicating beer: *Provided*, That nothing herein is

131 considered to prohibit sales of convenience between distributors
132 licensed in this state wherein one distributor sells, transfers or
133 delivers to another distributor a particular brand or brands for
134 sale at wholesale; and

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

139 (b) Any person who violates any provision of this article
140 including, but not limited to, any provision of this section, or any
141 rule, or order lawfully promulgated by the commissioner, or who
142 makes any false statement concerning any material fact in
143 submitting application for license or for a renewal of a license or
144 in any hearing concerning the revocation thereof, or who
145 commits any of the acts herein declared to be unlawful is guilty
146 of a misdemeanor and, upon conviction thereof, shall be
147 punished for each offense by a fine of not less than \$25 nor more
148 than \$500, or confined in the county or regional jail for not less
149 than thirty days nor more than six months, or by both fine and
150 confinement. Magistrates shall have concurrent jurisdiction with

151 the circuit court and any other courts having criminal jurisdiction
152 in their county for the trial of all misdemeanors arising under
153 this article.

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

155 (A) Has installed a transaction scan device on its licensed
156 premises; and

157 (B) Can demonstrate that it requires each employee, servant
158 or agent to verify the age of any individual to whom
159 nonintoxicating beer is sold, furnished or given away by the use
160 of the transaction device may not be subject to: (i) Any criminal
161 penalties whatsoever, including those set forth in subsection (b)
162 of this section; (ii) any administrative penalties from the
163 commissioner; or (iii) any civil liability whatsoever for the
164 improper sale, furnishing or giving away of nonintoxicating beer
165 to an individual who is less than twenty-one years of age by one
166 of his or her employees, servants or agents. Any agent, servant
167 or employee who has improperly sold, furnished or given away
168 nonintoxicating beer to an individual less than twenty-one years
169 of age is subject to the criminal penalties of subsection (b) of this
170 section. Any agent, servant or employee who has improperly

171 sold, furnished or given away nonintoxicating beer to an
172 individual less than twenty-one years of age is subject to
173 termination from employment, and the employer shall have no
174 civil liability for the termination.

175 (2) For purposes of this section, a Class B licensee can
176 demonstrate that it requires each employee, servant or agent to
177 verify the age of any individual to whom nonintoxicating beer is
178 sold by providing evidence: (A) That it has developed a written
179 policy which requires each employee, servant or agent to verify
180 the age of each individual to whom nonintoxicating beer will be
181 sold, furnished or given away; (B) that it has communicated this
182 policy to each employee, servant or agent; and (C) that it
183 monitors the actions of its employees, servants or agents
184 regarding the sale, furnishing or giving away of nonintoxicating
185 beer and that it has taken corrective action for any discovered
186 noncompliance with this policy.

187 (3) “Transaction scan” means the process by which a person
188 checks, by means of a transaction scan device, the age and
189 identity of the cardholder, and “transaction scan device” means
190 any commercial device or combination of devices used at a point

191 of sale that is capable of deciphering in an electronically
192 readable format the information enclosed on the magnetic strip
193 or bar code of a driver's license or other governmental identity
194 card.

195 (d) Nothing in this article nor any rule or regulation of the
196 commissioner shall prevent or be considered to prohibit any
197 licensee from employing any person who is at least eighteen
198 years of age to serve in the licensee's lawful employ, including
199 the sale or delivery of nonintoxicating beer as defined in this
200 article. With the prior approval of the commissioner, a licensee
201 whose principal business is the sale of food or consumer goods
202 or the providing of recreational activities, including, but not
203 limited to, nationally franchised fast food outlets, family-
204 oriented restaurants, bowling alleys, drug stores, discount stores,
205 grocery stores and convenience stores, may employ persons who
206 are less than eighteen years of age but at least sixteen years of
207 age: *Provided*, That the person's duties may not include the sale
208 or delivery of nonintoxicating beer or alcoholic liquors:
209 *Provided, however*, That the authorization to employ persons
210 under the age of eighteen years shall be clearly indicated on the
211 licensee's license.

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

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

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

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

1 The commissioner is hereby authorized:
2 (a) To enforce ~~the provisions of~~ this article.
3 (b) To enter the premises of any licensee at reasonable times
4 for the ~~purpose~~ purposes of inspecting the ~~same~~ the premises and
5 determining ~~the compliance of said~~ whether the licensee has
6 complied with ~~the provisions of~~ this article and any rules ~~and~~
7 ~~regulations~~ promulgated by the commissioner pursuant to ~~the~~
8 ~~provisions of~~ this article.

9 (c) To ~~promulgate such~~ propose for promulgation reasonable
10 rules and regulations as may be necessary for the execution and
11 enforcement of the provisions of this article, which may include,
12 but shall not be limited to, ~~the hours during which licensees may~~
13 ~~sell alcoholic liquors, and the use, handling, service and sale of~~
14 such alcoholic liquors. ~~Such~~ The commissioner shall propose
15 rules and regulations shall be promulgated for promulgation in
16 accordance with the provisions of article three, chapter
17 twenty-nine-a of the this code. ~~in like manner as if said article~~
18 ~~three of said chapter twenty-nine-a were set forth in extenso in~~
19 ~~this subdivision.~~

20 (d) To issue subpoenas and subpoenas duces tecum for the
21 purposes of conducting hearings under ~~the provisions of section~~
22 thirteen of this article, which ~~subpoenas and subpoenas duces~~
23 ~~tecum~~ shall be issued in the time, for the fees, and shall be
24 enforced in the manner specified in section one, article five,
25 chapter twenty-nine-a of this code ~~with like effect as if said~~
26 ~~section one were set forth in extenso in this subdivision.~~

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

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

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

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

5 (2) Authorize or permit any disturbance of the peace;
6 obscene, lewd, immoral or improper entertainment, conduct or
7 practice, gambling or any slot machine, multiple coin console
8 machine, multiple coin console slot machine or device in the
9 nature of a slot machine, except as provided in article
10 twenty-two-a and article twenty-two-b, chapter twenty-nine of
11 this code;

12 (3) Sell, give away or permit the sale of, gift to or the
13 procurement of any nonintoxicating beer, wine or alcoholic
14 liquors for or to, or permit the consumption of nonintoxicating
15 beer, wine or alcoholic liquors on the licensee's premises, by any
16 person less than twenty-one years of age;

17 (4) Sell, give away or permit the sale of, gift to or the
18 procurement of any nonintoxicating beer, wine or alcoholic
19 liquors, for or to any person known to be deemed legally

20 incompetent, or for or to any person who is physically
21 incapacitated due to consumption of nonintoxicating beer, wine
22 or alcoholic liquor or the use of drugs;

23 (5) (A) Sell, give or dispense nonintoxicating beer, wine or
24 alcoholic liquors in or on any licensed premises or in any rooms
25 directly connected therewith, between the hours of three o'clock
26 a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on any Sunday, or
27 between the hours of three o'clock a.m. and seven o'clock a.m.
28 on any weekday or Saturday;

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

34 (6) Permit the consumption by, or serve to, on the licensed
35 premises any nonintoxicating beer, wine or alcoholic liquors,
36 covered by this article, to any person who is less than twenty-one
37 years of age;

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

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

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

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

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

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

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

60 (c) Any person who violates any of the foregoing provisions
61 is guilty of a misdemeanor and, upon conviction thereof, shall be
62 fined not less than \$500 nor more than \$1,000, or ~~imprisoned~~
63 confined in the county jail for a period not to exceed more than
64 one year, or both fined and ~~imprisoned~~ confined.

ARTICLE 8. SALE OF WINES.

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

1 It ~~shall be~~ is unlawful for a retailer, farm winery, wine
2 specialty shop retailer, private wine bed and breakfast, private
3 wine restaurant or private wine spa licensee, his or her servants,
4 agents or employees to sell or deliver wine between the hours of
5 two o'clock a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on
6 Sundays, or between the hours of two o'clock a.m. and seven
7 o'clock a.m. on weekdays and Saturdays.

