

**Senate Bill No. 527**

(By Senators Wells, Kessler (Mr. President), Edgell, Fitzsimmons,  
Green, Laird, Miller, Snyder, Unger, Yost, D. Hall, Cookman,  
Nohe, Beach and Stollings)

[Introduced February 10, 2014; referred to the Committee on the  
Judiciary.]

**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; and application of current criminal  
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~~ is unlawful:

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

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

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

21           (4) For ~~any a~~ distributor to sell or offer to sell or ~~any a~~  
22 retailer to purchase or receive ~~any~~ nonintoxicating beer as defined  
23 in this article, except for cash. ~~and~~ No right of action shall

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

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

17 (6) For ~~any~~ a brewer or distributor to give, furnish, rent or  
18 sell any equipment, fixtures, signs or supplies directly or  
19 indirectly or through a subsidiary or affiliate to ~~any~~ a licensee  
20 engaged in selling products of the brewing industry at retail or to  
21 offer any prize, premium, gift or other similar inducement, except  
22 advertising matter of nominal value, to either trade or consumer  
23 buyers. ~~Provided, That~~ A distributor may offer, for sale or rent,

1 tanks of carbonic gas. Nothing herein ~~contained shall prohibit~~  
2 prohibits a brewer from sponsoring any professional or amateur  
3 athletic event or from providing prizes or awards for participants  
4 and winners in any events ~~Provided, however,~~ except that no event  
5 ~~shall~~ may be sponsored which permits actual participation by  
6 athletes or other persons who are minors, unless specifically  
7 authorized by the commissioner;

8 (7) For ~~any~~ a licensee to permit ~~in his or her premises any~~  
9 lewd, immoral or improper entertainment, conduct or practice in his  
10 or her premises;

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

18 (9) For ~~any~~ a licensee to obstruct the view of the interior of  
19 his or her premises by enclosure, lattice, drapes or any means  
20 which would prevent plain view of the patrons occupying the  
21 premises. The interior of all licensed premises shall be  
22 adequately lighted at all times. ~~Provided, That~~ Provisions of this  
23 subdivision do not apply to the premises of a Class B retailer, the

1 premises of a private club licensed under the provisions of article  
2 seven, chapter sixty of this code or the premises of a private wine  
3 restaurant licensed under the provisions of article eight of said  
4 chapter;

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

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

22 (12) For ~~any~~ a licensee to permit loud, boisterous or  
23 disorderly conduct of any kind upon his or her premises or to

1 permit the use of loud musical instruments if either or any of the  
2 same may disturb the peace and quietude of the community ~~wherein~~  
3 where the business is located ~~Provided, That~~ No licensee may have  
4 in connection with his or her place of business ~~any a~~ a loudspeaker  
5 ~~located~~ on the outside of the licensed premises that broadcasts or  
6 carries music of any kind;

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

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

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

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

20 (17) For ~~any a~~ a Class A licensee, ~~his, her, its or their~~  
21 ~~servants,~~ including his or her agents or employees, or for ~~any a~~ a  
22 licensee, ~~by or through any servants,~~ including his or her agents  
23 or employees, to allow ~~suffer or permit any a~~ a person less than

1 eighteen years of age to loiter in ~~or upon~~ any licensed premises.  
2 ~~except, however, that~~ The provisions of this subdivision do not  
3 apply where a person under the age of eighteen years is in ~~or upon~~  
4 the premises in the immediate company of his or her parent or  
5 parents; ~~or where and~~ while a person under the age of eighteen  
6 years is in ~~or upon~~ the premises for the purpose of and actually  
7 making a lawful purchase of ~~any items or commodities~~ items therein  
8 sold; or, for the purchase of and actually receiving any lawful  
9 service therein rendered including the consumption of any item of  
10 food, drink or soft drink ~~therein~~ lawfully prepared and served or  
11 sold for consumption on the premises;

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

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

5 (20) For a licensee to sell nonintoxicating beer by means of  
6 a self-scanning cash register or electronic cash register capable  
7 of recovering stored information related to the sale price of  
8 individual retail items and operated on a self-service basis by a  
9 consumer.

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



1 misdemeanors arising under this 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~~ individuals to whom  
7 nonintoxicating beer is sold, furnished or given away by the use of  
8 the transaction device may not be subject to the following:

9 (I) Any criminal penalties ~~whatsoever~~ whatever, including  
10 those set forth in subsection (b) of this section;

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

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

16 (2) An agent, servant or employee who has improperly sold,  
17 furnished or given away nonintoxicating beer to an individual less  
18 than twenty-one years of age is subject to the criminal penalties  
19 of subsection (b) of this section. ~~Any~~ An agent, servant or  
20 employee who has improperly sold, furnished or given away  
21 nonintoxicating beer to an individual less than twenty-one years of  
22 age is subject to termination from employment and the employer  
23 ~~shall have~~ has no civil liability for the termination.

1       ~~(2)~~ (3) For purposes of this section, a Class B licensee can  
2 demonstrate that it requires each employee, servant or agent to  
3 verify the age of ~~any individual~~ individuals to whom  
4 nonintoxicating beer is sold by providing evidence that:

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

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

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

15       ~~(3)~~ (4) "Transaction scan" means the process by which a person  
16 checks, by means of a transaction scan device, the age and identity  
17 of the cardholder and "transaction scan device" means any  
18 commercial device or combination of devices used at a point of sale  
19 that is capable of deciphering in an electronically readable format  
20 the information enclosed on the magnetic strip or bar code of a  
21 driver's license or other governmental identity card.

22       (d) Nothing in this article nor any rule ~~or regulation~~ of the  
23 commissioner ~~shall prevent or be considered to prohibit any~~

1 prohibits a licensee from employing ~~any~~ a person who is at least  
 2 eighteen years of age to serve in the licensee's lawful employ,  
 3 including the sale or delivery of nonintoxicating beer as defined  
 4 in this article. With the prior approval of the commissioner, a  
 5 licensee whose principal business is the sale of food or consumer  
 6 goods or the providing of recreational activities including, but  
 7 not limited to, nationally franchised fast food outlets,  
 8 family-oriented restaurants, bowling alleys, drug stores, discount  
 9 stores, grocery stores and convenience stores, may employ persons  
 10 who are less than eighteen years of age but at least sixteen years  
 11 of age ~~Provided, That the person's duties may~~ if that person's  
 12 duties do not include the sale or delivery of nonintoxicating beer  
 13 or alcoholic liquors ~~Provided, however, That~~ and the authorization  
 14 to employ persons under the age of eighteen years ~~shall be~~ is  
 15 clearly indicated on the licensee's license.

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

17 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

18 **§60-6-8. Unlawful sale or possession by licensee.**

19 A licensed person ~~shall~~ may not:

- 20 (1) Sell alcoholic liquors of a kind other than that which  
 21 such license or this chapter authorizes him or her to sell;
- 22 (2) Sell beer to which wine, spirits, or alcohol has been  
 23 added;

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

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

6 (5) Sell alcoholic liquors except as authorized by his or her  
7 license;

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

10 (7) Keep on the premises covered by his or her license  
11 alcoholic liquor other than that which he or she is authorized to  
12 sell by such license or by this chapter; or

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

17 A person who violates any provision of this section ~~shall be~~  
18 is guilty of a misdemeanor and, upon conviction thereof, shall be  
19 fined not less than \$50 nor more than \$500, or confined in jail not  
20 less than thirty days nor more than one year, or both fined ~~such~~  
21 ~~fine and imprisonment for the first offense.~~ and confined. Upon  
22 conviction of a second or subsequent offense, the court may ~~in its~~  
23 ~~discretion~~ impose a penalty of ~~confinement~~ imprisonment in the

1 ~~penitentiary~~ a state correctional facility for a period not to  
2 exceed three years. However, imprisonment in a state correctional  
3 facility does not apply to the violation of the prohibition of sale  
4 of beer or wine by means of a self-scanning or electronic cash  
5 register as described 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.