

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4314

(BY DELEGATES ROHRBACH, STANSBURY, BATES,
ELLINGTON, HOUSEHOLDER, MILLER, PERDUE, WAXMAN
AND B. WHITE)

[Introduced January 27, 2016;
referred to the Committee on Health and Human
Resources then the Judiciary.]

1 A BILL to amend and reenact §60-1-5, §60-3-11, §60-6-7 and §60-6-8 of the Code of West
2 Virginia, 1931, as amended, all relating to prohibiting the sale of powdered or crystalline
3 alcohol; and to amend said code by adding thereto a new section, designated §61-10-33,
4 all relating to prohibiting the sale of pure caffeine products; defining terms; prohibiting the
5 commissioner from listing or stocking powdered alcohol in inventory; creating a criminal
6 offense for anyone who manufactures or sells, aids or abets in the manufacture or sale of
7 powdered alcohol, or possesses, uses or in any other manner provides or furnishes
8 powdered alcohol; making a second and subsequent offense a felony and providing for
9 increased penalties; creating a criminal offense for any licensee who sells, possesses,
10 possesses for sale, furnishes or provides any powdered alcohol; making a second and
11 subsequent offense a felony and providing for increased penalties; defining terms;
12 creating a criminal offense for the sale and possession of pure caffeine products; providing
13 exclusions; and providing penalties.

Be it enacted by the Legislature of West Virginia:

1 That §60-1-5, §60-3-11, §60-6-7 and §60-6-8 of the Code of West Virginia, 1931, as
2 amended, be amended and reenacted, and that said code be amended by adding thereto a new
3 section, designated §61-10-33, all to read as follows:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 “Alcohol” shall means ethyl alcohol whatever its origin and shall include synthetic ethyl
3 alcohol but not denatured alcohol.

4 “Beer” shall means any beverage obtained by the fermentation of barley, malt, hops or
5 any other similar product or substitute, and containing more alcohol than that of nonintoxicating
6 beer.

7 “Nonintoxicating beer” ~~shall~~ means any beverage obtained by the fermentation of barley,
8 malt, hops or similar products or substitute and containing not more alcohol than that specified by
9 section two, article sixteen, chapter eleven of this code.

10 “Wine” ~~shall~~ means any alcoholic beverage obtained by the fermentation of the natural
11 content of fruits, or other agricultural products, containing sugar.

12 “Spirits” ~~shall~~ means any alcoholic beverage obtained by distillation and mixed with
13 potable water and other substances in solution and includes brandy, rum, whiskey, cordials and
14 gin.

15 “Alcoholic liquor” ~~shall~~ includes alcohol, beer, wine and spirits and any liquid or solid
16 capable of being used as a beverage, but shall not include nonintoxicating beer.

17 “Original package” ~~shall~~ means any closed or sealed container or receptacle used for
18 holding alcoholic liquor.

19 “Sale” ~~shall~~ means any transfer, exchange or barter in any manner or by any means, for
20 a consideration, and shall include all sales made by principal, proprietor, agent or employee.

21 “Selling” ~~shall~~ includes solicitation or receipt of orders; possession for sale; and
22 possession with intent to sell.

23 “Person” ~~shall~~ means an individual, firm, partnership, limited partnership, corporation or
24 voluntary association.

25 “Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend,
26 bottle or fill an original package with any alcoholic liquor.

27 “Manufacturer” ~~shall~~ means any person engaged in the manufacture of any alcoholic
28 liquor, and among others includes a distiller, a rectifier, a wine maker and a brewer.

29 “Brewery” ~~shall~~ means an establishment where beer is manufactured or in any way
30 prepared.

31 “Winery” ~~shall~~ means an establishment where wine is manufactured or in any way
32 prepared.

33 “Distillery” ~~shall~~ means an establishment where alcoholic liquor other than wine or beer is
34 manufactured or in any way prepared.

35 “Public place” ~~shall~~ means any place, building or conveyance to which the public has, or
36 is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies
37 and corridors of hotels and any highway, street, lane, park or place of public resort or amusement:
38 *Provided*, That the term “public place” shall not mean or include any of the above-named places
39 or any portion or portions thereof which qualify and are licensed under the provisions of this
40 chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the
41 term “public place” shall not mean or include any legally demarcated area designated solely for
42 the consumption of beverages and freshly prepared food that directly connects and adjoins any
43 portion or portions of a premises that qualifies and is licensed under the provisions of this chapter
44 to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term “public place”
45 shall also not include a facility constructed primarily for the use of a Division I college that is a
46 member of the National Collegiate Athletic Association, or its successor, and used as a football,
47 basketball, baseball, soccer or other Division I sports stadium which holds a special license to sell
48 wine pursuant to the provisions of section three, article eight of this chapter, in the designated
49 areas of sale and consumption of wine and other restrictions established by that section and the
50 terms of the special license issued thereunder.

51 “State liquor store” ~~shall~~ means a store established and operated by the commission
52 under this chapter for the sale of alcoholic liquor in the original package for consumption off the
53 premises.

54 “An agency” ~~shall~~ means a drugstore, grocery store or general store designated by the
55 commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control
56 Commissioner.

57 “Department” ~~shall~~ means the organization through which the commission exercises
58 powers imposed upon it by this chapter.

59 “Commissioner” or “commission” ~~shall~~ means the West Virginia Alcohol Beverage Control
60 Commissioner.

61 “Intoxicated” ~~shall~~ means having one’s faculties impaired by alcohol or other drugs to the
62 point where physical or mental control or both are markedly diminished.

63 “Powdered alcohol” means an alcohol manufactured in a powder or crystalline form for
64 either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter,
65 powdered alcohol excludes any material intended for industrial purposes.

ARTICLE 3. SALES BY COMMISSIONER.

1 **§60-3-11. Stock or inventory control.**

2 The commission shall prescribe a method of stock or inventory control that will show the
3 amount of each variety, class and brand of alcoholic liquor on hand in each state store, agency,
4 and warehouse at any time. The commissioner shall not list or stock powdered alcohol in
5 inventory.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

1 A person shall not:

2 (1) Manufacture or sell in this state without a license any alcoholic liquor except as
3 permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as
5 permitted by this article;

6 (3) Sell without a license any alcoholic liquor other than permitted by this article;

7 (4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude,
8 unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

9 (5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has
10 been sold at retail in this state;

11 (6) Advertise any alcoholic liquor in this state except in accordance with the rules and
12 regulations of the commissioner; or

13 (7) Distribute, deal in, process, or use crowns, stamps or seals required under the authority
14 of this chapter, except in accordance with the rules and regulations prescribed by the
15 commissioner; or

16 (8) Manufacture or sell, aid or abet in the manufacture or sale, possess, use or in any
17 other manner provide or furnish powdered alcohol.

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

26 An indictment for any first violation of subdivisions (1), (2) and (3) of this section, or any of
27 them, shall be sufficient if in form or effect as follows:

28 State of West Virginia

29 County of, to wit:

30 The Grand Jurors of the State of West Virginia, in and for the body of the County of,
31 upon their oaths present that, on the day of, 19...., in the said County of
32, did unlawfully, without a State license and without authorization under the Alcohol
33 Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a
34 quantity of alcoholic liquor, against the peace and dignity of the state.

35 Any indictment under this section shall otherwise be in conformity with section one, article
36 nine, chapter sixty-two of the code.

1 **§60-6-8. Unlawful sale or possession by licensee.**

2 A licensed person shall not:

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

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

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

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

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

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

12 (7) Sell, possess, possess for sale, furnish or provide any powdered alcohol;

13 (8) Keep on the premises covered by his or her license alcoholic liquor other than that
14 which he or she is authorized to sell by such license or by this chapter.

15 A person who violates any provision of this section shall be guilty of a misdemeanor and,
16 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less
17 than thirty days nor more than one year, or both such fine and imprisonment for the first offense.

18 ~~Upon conviction of a second or subsequent offense, the court may in its discretion impose a~~
19 ~~penalty of confinement in the penitentiary for a period not to exceed three years. A person who~~
20 ~~violates any provision of this section for the second or any subsequent offense under this section,~~
21 ~~is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correction facility~~
22 ~~for a period not to exceed three years.~~

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-33. Prohibition against selling a pure caffeine product.

1 (a) "Pure caffeine product" means a product that consists solely or primarily of caffeine
2 and is manufactured into a crystalline, liquid, or powdered form. "Pure caffeine product" does not
3 include any of the following that contains caffeine and is formulated, manufactured, and labeled
4 in accordance with the laws and regulations enforced by the United States Food and Drug
5 Administration:

6 (1) Coffee, tea, soft drink, energy drink, or any other caffeine-containing beverage;

7 (2) Any energy product.

8 (b) Except as provided in subsection (c), no person shall knowingly possess, sell or offer
9 for sale a pure caffeine product.

10 (c) Subsection (b) does not prohibit a person from possessing, selling or offering for sale
11 any product manufactured in a unit-dose form such as a pill, tablet, or caplet, but only if each unit
12 dose of the product contains not more than two hundred fifty milligrams of caffeine.

13 (d) Nothing in this section prohibits either of the following:

14 (1) Possession of a product described in subsection (c);

15 (2) Possession of a pure caffeine product by any of the following:

16 (A) A food processing establishment;

17 (B) A manufacturer of a drug that is available without a prescription;

18 (C) A laboratory that is licensed by the Board of Pharmacy;

19 (D) A laboratory of any agency or department of this state that performs testing, analysis,
20 and other laboratory services on behalf of the state; and

21 (E) A postal or delivery service that transports or delivers a pure caffeine product to an
22 entity specified in subsections (A) to (D) of this section.

23 (e) A person who violates subsection (b) is guilty of a misdemeanor and, upon conviction
24 thereof, shall be fined not more than \$100.

NOTE: The purpose of this bill is to prohibit the sale of pure caffeine products and to prohibit the sale of powdered or crystalline alcohol for human consumption.

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