

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 497

BY SENATORS TAKUBO, TRUMP, PALUMBO, STOLLINGS,

WILLIAMS, GAUNCH AND BLAIR

[Introduced February 3, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §60-3-11 of said code; and to amend and reenact §60-6-7 and §60-6-8 of
 3 said code, all relating to banning and providing for criminal penalties for the manufacture,
 4 possession, use, sale and furnishing of powdered alcohol; and defining a term.

Be it enacted by the Legislature of West Virginia:

1 That §60-1-5 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §60-3-11 of said code be amended and reenacted; and that §60-6-7 and §60-6-8
 3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin and shall include synthetic ethyl
 3 alcohol but not denatured alcohol.

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

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

9 "Wine" shall mean any alcoholic beverage obtained by the fermentation of the natural
 10 content of fruits, or other agricultural products, containing sugar.

11 "Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable
 12 water and other substances in solution and includes brandy, rum, whiskey, cordials and gin.

13 "Alcoholic liquor" shall include alcohol, beer, wine and spirits and any liquid or solid
 14 capable of being used as a beverage, but shall not include nonintoxicating beer.

15 "Original package" shall mean any closed or sealed container or receptacle used for
 16 holding alcoholic liquor.

17 "Sale" shall mean any transfer, exchange or barter in any manner or by any means, for a
18 consideration, and shall include all sales made by principal, proprietor, agent or employee.

19 "Selling" shall include solicitation or receipt of orders; possession for sale; and possession
20 with intent to sell.

21 "Person" shall mean an individual, firm, partnership, limited partnership, corporation or
22 voluntary association.

23 "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend,
24 bottle or fill an original package with any alcoholic liquor.

25 "Manufacturer" shall mean any person engaged in the manufacture of any alcoholic liquor,
26 and among others includes a distiller, a rectifier, a wine maker and a brewer.

27 "Brewery" shall mean an establishment where beer is manufactured or in any way
28 prepared.

29 "Winery" shall mean an establishment where wine is manufactured or in any way
30 prepared.

31 "Distillery" shall mean an establishment where alcoholic liquor other than wine or beer is
32 manufactured or in any way prepared.

33 "Public place" shall mean any place, building or conveyance to which the public has, or is
34 permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and
35 corridors of hotels and any highway, street, lane, park or place of public resort or amusement:
36 *Provided*, That the term "public place" shall not mean or include any of the above-named places
37 or any portion or portions thereof which qualify and are licensed under the provisions of this
38 chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the
39 term "public place" shall not mean or include any legally demarcated area designated solely for
40 the consumption of beverages and freshly prepared food that directly connects and adjoins any
41 portion or portions of a premises that qualifies and is licensed under the provisions of this chapter

42 to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term "public place"
43 shall also not include a facility constructed primarily for the use of a Division I college that is a
44 member of the National Collegiate Athletic Association, or its successor, and used as a football,
45 basketball, baseball, soccer or other Division I sports stadium which holds a special license to sell
46 wine pursuant to the provisions of section three, article eight of this chapter, in the designated
47 areas of sale and consumption of wine and other restrictions established by that section and the
48 terms of the special license issued thereunder.

49 "State liquor store" shall mean a store established and operated by the commission under
50 this chapter for the sale of alcoholic liquor in the original package for consumption off the
51 premises.

52 "An agency" shall mean a drugstore, grocery store or general store designated by the
53 commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control
54 Commissioner.

55 "Department" shall mean the organization through which the commission exercises
56 powers imposed upon it by this chapter.

57 "Commissioner" or "commission" shall mean the West Virginia Alcohol Beverage Control
58 Commissioner.

59 "Intoxicated" shall mean having one's faculties impaired by alcohol or other drugs to the
60 point where physical or mental control or both are markedly diminished.

61 "Powdered alcohol" shall mean an alcohol manufactured in a powder or crystalline form
62 for either direct use or reconstitution as an alcoholic liquor or food.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-11. Stock or inventory control.

1 The commission shall prescribe a method of stock or inventory control that will show the

2 amount of each variety, class and brand of alcoholic liquor on hand in each state store, agency,
3 and warehouse at any time. The commissioner may not list or stock powdered alcohol in
4 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~~ confinement, for the
21 first offense. Upon conviction of a second or subsequent offense, the court may in its discretion
22 impose a penalty of confinement in ~~the penitentiary~~ a state correctional facility for a period not to
23 exceed three years.

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

26 State of West Virginia

27 County of, to wit:

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

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

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

1 A licensed person shall not:

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

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

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

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

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

- 10 (6) Sell any alcoholic liquor when forbidden by the provisions of this chapter;
11 (7) Sell, possess, possess for sale, furnish or provide any powdered alcohol; or
12 ~~(7)~~ (8) Keep on the premises covered by his or her license alcoholic liquor other than that
13 which he or she is authorized to sell by such license or by this chapter.

14 A person who violates any provision of this section shall be guilty of a misdemeanor and,
15 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less
16 than thirty days nor more than one year, or both such fine and ~~imprisonment~~ confinement for the
17 first offense. Upon conviction of a second or subsequent offense, the court may in its discretion
18 impose a penalty of confinement in ~~the penitentiary~~ a state correctional facility for a period not to
19 exceed three years.

NOTE: The purpose of this bill is to ban and provide for criminal penalties for the manufacture, possession, use, sale and furnishing of powdered alcohol. The bill defines a term.

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