

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4534

BY DELEGATES WALTERS, MCCUSKEY, HAMILTON,
UPSON, STORCH, MANCHIN, SKINNER, ESPINOSA, SHOTT,
E. NELSON AND PHILLIPS

[By Request of Alcohol Beverage Control
Administration]

[Introduced February 15, 2016; Referred
to the Committee on Roads and Transportation then
the Judiciary.]

1 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §60-7-12 of said code; and to amend and reenact §60-8-34 of said
 3 code, all relating to allowing tavern, private club and private wine restaurant businesses
 4 operational hours for the sale and serving of alcoholic liquors at 11:00 a.m. on Sundays,
 5 consistent with operational hours during all days of the week.

Be it enacted by the Legislature of West Virginia:

1 That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §60-7-12 of said code be amended and reenacted; and that §60-8-34 of said code
 3 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 or her, ~~her~~, its or their servants, agents or employees to sell, give
 3 or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms
 4 directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of
 5 two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and ~~one o'clock~~
 6 ~~p.m.~~ eleven o'clock a.m., on any Sunday, except in private clubs licensed under the provisions of
 7 article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of
 8 alcoholic liquors;

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

12 (3) For any licensee, his or her, ~~her~~, its or their servants, agents or employees to sell,
 13 furnish or give any nonintoxicating beer as defined in this article to any person who is less than

14 twenty-one years of age;

15 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
16 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to
17 collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein
18 contained shall prohibit a licensee from crediting to a purchaser the actual price charged for
19 packages or containers returned by the original purchaser as a credit on any sale, or from
20 refunding to any purchaser the amount paid or deposited for the containers when title is retained
21 by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer
22 of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating
23 beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must
24 initiate the transfer no later than noon of one business day after the delivery;

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

27 (6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs
28 or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in
29 selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar
30 inducement, except advertising matter of nominal value, to either trade or consumer buyers:
31 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein
32 contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or
33 from providing prizes or awards for participants and winners in any events: *Provided, however*,
34 That no event shall be sponsored which permits actual participation by athletes or other persons
35 who are minors, unless specifically authorized by the commissioner;

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

38 (8) For any licensee except the holder of a license to operate a private club issued under
39 the provisions of article seven, chapter sixty of this code or a holder of a license or a private wine

40 restaurant issued under the provisions of article eight of said chapter to possess a federal license,
41 tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic
42 drinks other than nonintoxicating beer;

43 (9) For any licensee to obstruct the view of the interior of his or her premises by enclosure,
44 lattice, drapes or any means which would prevent plain view of the patrons occupying the
45 premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided,*
46 That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises
47 of a private club licensed under the provisions of article seven, chapter sixty of this code or the
48 premises of a private wine restaurant licensed under the provisions of article eight of said chapter;

49 (10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in
50 the sale, possession or consumption of any alcoholic liquors on the premises covered by a license
51 or on premises directly or indirectly used in connection therewith: *Provided,* That the prohibition
52 contained in this subdivision with respect to the selling or possessing or to the acquiescence in
53 the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder
54 of a license to operate a private club issued under the provisions of article seven, chapter sixty of
55 this code nor shall the prohibition be applicable to a private wine restaurant licensed under the
56 provisions of article eight of said chapter insofar as the private wine restaurant is authorized to
57 serve wine;

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

61 (12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his
62 or her premises or to permit the use of loud musical instruments if either or any of the same may
63 disturb the peace and quietude of the community wherein the business is located: *Provided,* That
64 no licensee may have in connection with his or her place of business any loudspeaker located on
65 the outside of the licensed premises that broadcasts or carries music of any kind;

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

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

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

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

75 (17) For any Class A licensee, his or her, ~~her~~, its or their servants, agents or employees,
76 or for any licensee by or through any servants, agents or employees, to allow, suffer or permit
77 any person less than eighteen years of age to loiter in or upon any licensed premises; except,
78 however, that the provisions of this subdivision do not apply where a person under the age of
79 eighteen years is in or upon the premises in the immediate company of his or her parent or
80 parents, or where and while a person under the age of eighteen years is in or upon the premises
81 for the purpose of and actually making a lawful purchase of any items or commodities therein
82 sold, or for the purchase of and actually receiving any lawful service therein rendered, including
83 the consumption of any item of food, drink or soft drink therein lawfully prepared and served or
84 sold for consumption on the premises;

85 (18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer
86 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
87 beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose
88 principal place of business or licensed premises is within the assigned territory of another
89 distributor of such nonintoxicating beer: *Provided*, That nothing herein is considered to prohibit
90 sales of convenience between distributors licensed in this state wherein one distributor sells,
91 transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

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

95 (b) Any person who violates any provision of this article including, but not limited to, any
96 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
97 makes any false statement concerning any material fact in submitting application for license or
98 for a renewal of a license or in any hearing concerning the revocation thereof, or who commits
99 any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction
100 thereof, shall be punished for each offense by a fine of not less than \$25 nor more than \$500, or
101 confined in the county or regional jail for not less than thirty days nor more than six months, or by
102 both fine and confinement. Magistrates shall have concurrent jurisdiction with the circuit court and
103 any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising
104 under this article.

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

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

107 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of
108 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the
109 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
110 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
111 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of
112 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her
113 employees, servants or agents. Any agent, servant or employee who has improperly sold,
114 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age
115 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or
116 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual
117 less than twenty-one years of age is subject to termination from employment, and the employer

118 shall have no civil liability for the termination.

119 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each
120 employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is
121 sold by providing evidence: (A) That it has developed a written policy which requires each
122 employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will
123 be sold, furnished or given away; (B) that it has communicated this policy to each employee,
124 servant or agent; and (C) that it monitors the actions of its employees, servants or agents
125 regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken
126 corrective action for any discovered noncompliance with this policy.

127 (3) "Transaction scan" means the process by which a person checks, by means of a
128 transaction scan device, the age and identity of the cardholder, and "transaction scan device"
129 means any commercial device or combination of devices used at a point of sale that is capable
130 of deciphering in an electronically readable format the information enclosed on the magnetic strip
131 or bar code of a drivers license or other governmental identity card.

132 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or
133 be considered to prohibit any licensee from employing any person who is at least eighteen years
134 of age to serve in the licensees lawful employ, including the sale or delivery of nonintoxicating
135 beer as defined in this article. With the prior approval of the commissioner, a licensee whose
136 principal business is the sale of food or consumer goods or the providing of recreational activities,
137 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,
138 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ
139 persons who are less than eighteen years of age but at least sixteen years of age: Provided, That
140 the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:
141 Provided, however, That the authorization to employ persons under the age of eighteen years
142 shall be clearly indicated on the licensees license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

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

5 (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper
6 entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine,
7 multiple coin console slot machine or device in the nature of a slot machine;

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

11 (4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating
12 beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or
13 for or to any person who is physically incapacitated due to consumption of nonintoxicating beer,
14 wine or alcoholic liquor or the use of drugs;

15 (5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any
16 licensed premises or in any rooms directly connected therewith, between the hours of three
17 o'clock a.m. and ~~one o'clock p.m.~~ eleven o'clock a.m. on any Sunday;

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

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

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

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

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

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

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

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

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

ARTICLE 8. SALE OF WINES.

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

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

NOTE: The purpose of this bill is to provide restaurant businesses licensed as taverns, private clubs and private wine restaurants to have more flexible operational hours that promotes sales and tax growth and further that the operational hours are consistent among all days of the week.

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