

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4565

BY DELEGATES MCCUSKEY AND SKINNER

[Introduced February 16, 2016;
referred to 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 Class A Licensees to begin selling alcohol at ten o'clock a.m.
 4 on Sundays; and to provide the county commission with the authority to decide whether
 5 Class B Licensee may begin selling at ten o'clock a.m. on Sundays.

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) (A) For any Class A licensee, his, her, its or their servants, agents or employees to
 3 sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in
 4 any rooms directly connected, ~~therewith~~ nonintoxicating beer or cooler on weekdays between the
 5 hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and
 6 one o'clock p.m. on any Sunday, except in private clubs licensed under the provisions of article
 7 seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic
 8 liquors: Provided, That upon approval of the county commission in which the Class A licensee
 9 operates, the sale of any nonintoxicating beer or cooler may begin at eleven o'clock a.m. on
 10 Sunday.

11 (B) For any Class B licensee to sell, furnish or give away nonintoxicating beer on
 12 weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours
 13 of two o'clock a.m. and one o'clock p.m. on any Sunday: *Provided, That upon approval of the*

14 county commission in which the Class B licensee operates, the sale of nonintoxicating beer may
15 begin at eleven o'clock a.m. on Sunday.

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

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

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

33 (5) For any brewer or distributor or brew-pub or his, her, its or their agents to transport or
34 deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

35 (6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs
36 or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in
37 selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar
38 inducement, except advertising matter of nominal value, to either trade or consumer buyers:
39 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing ~~herein~~

40 contained in this section ~~shall prohibit~~ prohibits a brewer from sponsoring any professional or
41 amateur athletic event or from providing prizes or awards for participants and winners in any
42 events: *Provided, however,* That no event shall be sponsored which permits actual participation
43 by athletes or other persons who are minors, unless specifically authorized by the commissioner;

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

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

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

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

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

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

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

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

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

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

84 (17) For any Class A licensee, his, her, its or their servants, agents or employees, or for
85 any licensee by or through any servants, agents or employees, to allow, suffer or permit any
86 person less than eighteen years of age to loiter in or upon any licensed premises; except,
87 however, that the provisions of this subdivision do not apply where a person under the age of
88 eighteen years is in or upon the premises in the immediate company of his or her parent or
89 parents, or where and while a person under the age of eighteen years is in or upon the premises
90 for the purpose of and actually making a lawful purchase of any items or commodities therein
91 sold, or for the purchase of and actually receiving any lawful service therein rendered, including

92 the consumption of any item of food, drink or soft drink therein lawfully prepared and served or
93 sold for consumption on the premises;

94 (18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer
95 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
96 beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose
97 principal place of business or licensed premises is within the assigned territory of another
98 distributor of such nonintoxicating beer: *Provided*, That nothing ~~herein~~ in this section is
99 considered to prohibit sales of convenience between distributors licensed in this state ~~wherein~~
100 where one distributor sells, transfers or delivers to another distributor a particular brand or brands
101 for sale at wholesale; and

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

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

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

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

117 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of
118 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the
119 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
120 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
121 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of
122 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her
123 employees, servants or agents. Any agent, servant or employee who has improperly sold,
124 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age
125 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or
126 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual
127 less than twenty-one years of age is subject to termination from employment, and the employer
128 shall have no civil liability for the termination.

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

137 (3) "Transaction scan" means the process by which a person checks, by means of a
138 transaction scan device, the age and identity of the cardholder, and "transaction scan device"
139 means any commercial device or combination of devices used at a point of sale that is capable
140 of deciphering in an electronically readable format the information enclosed on the magnetic strip
141 or bar code of a driver's license or other governmental identity card.

142 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or
143 be considered to prohibit any licensee from employing any person who is at least eighteen years
144 of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating
145 beer as defined in this article. With the prior approval of the commissioner, a licensee whose
146 principal business is the sale of food or consumer goods or the providing of recreational activities,
147 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,
148 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ
149 persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That
150 the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:
151 *Provided, however*, That the authorization to employ persons under the age of eighteen years
152 shall be clearly indicated on the licensee's 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. on any Sunday. Provided, that upon approval of the county
18 commission in which the licensee operates, the licensee may sell, give, or dispense
19 nonintoxicating beer, wine, or alcoholic liquors beginning at eleven o'clock a.m. on Sunday.

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

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

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

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

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

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

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

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

40 (c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor
41 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or
42 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. on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on weekdays
5 and Saturdays: Provided, That upon approval of the county commission in which the retailer is
6 located, sale or delivery of wine may begin at eleven o'clock a.m. on Sundays.

NOTE: The purpose of this bill is to allow restaurants, breweries, distilleries, and other establishments to serve alcohol beginning at ten o'clock a.m. on Sunday morning and to give the county commission the authority to allow retailers of wine and beer within the county to begin selling wine and beer at eleven o'clock a.m. on Sunday morning.

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