

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2820**

BY DELEGATES HOWELL, HAMRICK, PAYNTER, LEWIS,  
ARVON, MARTIN, STORCH, FRICH, BLAIR, UPSON AND  
WALTERS

[Introduced March 8, 2017; Referred  
to the Committee on Government Organization then  
Finance.]

1 A BILL to repeal §60-1-4 of the Code of West Virginia, 1931, as amended; to repeal §60-2-2, §60-  
 2 2-3, §60-2-7, §60-2-9, and §60-2-10 of said code; to repeal §60-3-1, §60-3-2, §60-3-3,  
 3 §60-3-4, §60-3-5, §60-3-6, §60-3-7, §60-3-8, §60-3-9, §60-3-10, §60-3-11, §60-3-12, §60-  
 4 3-13, §60-3-14, §60-3-15, §60-3-16, §60-3-17, §60-3-18, §60-3-20, §60-3-21, §60-3-23,  
 5 and §60-3-24 of said code; to amend and reenact §11-16-3 and §11-16-4 of said code; to  
 6 amend said code by adding thereto a new article, designated §29-22D-1, §29-22D-2 and  
 7 §29-22D-3; to amend and reenact §60-1-5 of said code; to amend and reenact §60-2-1 of  
 8 said code, all relating to abolishing the Alcohol Beverage Control Commissioner;  
 9 transferring its powers and duties to the State Lottery Commission; creating alcohol  
 10 beverage distributors licenses; and creating a per case tax on alcohol.

*Be it enacted by the Legislature of West Virginia:*

1 That §60-1-4 of the Code of West Virginia, 1931, as amended, be repealed; that §60-2-2,  
 2 §60-2-3, §60-2-7, §60-2-9, and 60-2-10 of said code be repealed; that §60-3-1, §60-3-2, §60-3-  
 3 3, §60-3-4, §60-3-5, §60-3-6, §60-3-7, §60-3-8, §60-3-9, §60-3-10, §60-3-11, §60-3-12, §60-3-  
 4 13, §60-3-14, §60-3-15, §60-3-16, §60-3-17, §60-3-18, §60-3-20, §60-3-21, §60-3-23, and §60-  
 5 3-24 of said code be repealed; that §11-16-3 and §11-16-4 of said code be amended and  
 6 reenacted; that said code be amended by adding thereto a new article, designated §29-22D-1,  
 7 §29-22D-2 and §29-22D-3; that §60-1-5 of said code be amended and reenacted; and that §60-  
 8 2-1 of said code be amended and reenacted, all to read as follows:

**CHAPTER 11. TAXATION.**

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-3. Definitions.**

1 For the purpose of this article, except where the context clearly requires differently:  
 2 (1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed,  
 3 concocted, blended, bottled or otherwise produced, or imported or transhipped by a brewer or

4 manufacturer, the labels of which have been registered and approved by the commissioner that  
5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid  
6 franchise agreement or a valid amendment thereto.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing or  
8 importing or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale  
9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this  
10 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or  
11 nonintoxicating craft beer.

12 (3) "Brewpub" means a place of manufacture of nonintoxicating beer or nonintoxicating  
13 craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a  
14 portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating  
15 craft beer by the resident brewer owning the brewpub.

16 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a  
17 freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a  
19 mixed retail liquor outlet licensed pursuant to chapter sixty of this code.

20 (6) "Commissioner" means ~~the West Virginia Alcohol Beverage Control Commissioner~~ the  
21 State Lottery Commission.

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating  
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place  
24 of business shall be within this state. For purposes of a distributor only, the term "person" means  
25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,  
26 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a  
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust  
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the  
29 distributor license that are unlawful acts or violations of article eleven of this chapter

30 notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

31 (8) "Franchise agreement" means the written agreement between a brewer and a  
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,  
33 which agreement has been approved by the commissioner. The franchise agreement binds the  
34 parties so that a distributor, appointed by a brewer, may distribute all of the brewer's  
35 nonintoxicating beer products, brands or family of brands imported and offered for sale in West  
36 Virginia, including, but not limited to, existing brands, line extensions and new brands all in the  
37 brewer's assigned territory for the distributor. All brands and line extensions being imported or  
38 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a  
39 written amendment to the franchise agreement. A franchise agreement may be amended by  
40 mutual written agreement of the parties as approved by the commissioner with identical terms  
41 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise  
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually  
43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided  
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer  
45 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer  
46 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated  
47 distributor.

48 (9) "Franchise distributor network" means the distributors who have entered into a binding  
49 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating  
50 beer products, brands and line extensions in an assigned territory for a brewer. A brewer may  
51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the  
52 manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale  
53 from a selling brewer as specified in subdivision (2), subsection (a), section twenty-one of this  
54 article shall continue to maintain and be bound by the selling brewer's separate franchise  
55 distributor's network for any of its existing brands, line extensions and new brands.

56 (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer,  
57 nonintoxicating beer and other alcohol-related products, as defined pursuant to section four,  
58 article three-a, chapter sixty of this code.

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal or other  
60 material approved by the commissioner, that may be only thirty-two or sixty-four fluid ounces in  
61 size and must be capable of being securely sealed. The growler is utilized by an authorized  
62 licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft  
63 beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any  
64 other provision of this code to the contrary, a securely sealed growler is not an open container  
65 under federal, state and local law. A growler with a broken seal is an open container under federal,  
66 state and local law unless it is located in an area of the motor vehicle physically separated from  
67 the passenger compartment. The secure sealing of a growler requires the use of a tamper-  
68 resistant seal, security tape or other material, as approved by the commissioner, placed on or  
69 over the growler's opening, which seal, security tape or other material is clearly marked with the  
70 date of the secure sealing by the authorized licensee who is selling the growler.

71 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand  
72 or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale  
73 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated or  
74 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent  
75 entities, contracted entities, affiliated entities or other related entities. In determining whether a  
76 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited  
77 to, the following factors: Name or partial name; trade name or partial trade name; logos;  
78 copyrights; trademarks or trade design; product codes; advertising promotion or pricing.

79 (13) "Nonintoxicating beer" means all natural cereal malt beverages or products of the  
80 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and  
81 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft

82 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing  
83 at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol  
84 by weight, or twelve percent by volume, whichever is greater. The word "liquor" as used in chapter  
85 sixty of this code does not include or embrace nonintoxicating beer nor any of the beverages,  
86 products, mixtures or preparations included within this definition.

87 (14) "Nonintoxicating beer sampling event" means an event approved by the  
88 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized  
89 pursuant to section eleven-a of this article.

90 (15) "Nonintoxicating beer sampling day" means any days and hours of the week where  
91 Class A retail licensees may sell nonintoxicating beer pursuant to section eleven-a and  
92 subdivision (1), subsection (a), section eighteen of this article, and is approved, in writing, by the  
93 commissioner to conduct a nonintoxicating beer sampling event.

94 (16) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation  
95 of barley, malt, hops or any other similar product or substitute and containing not less than one  
96 half of one percent by volume and not more than twelve percent alcohol by volume or nine and  
97 six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering  
98 the alcohol effect.

99 (17) "Original container" means the container used by a resident brewer or brewer at the  
100 place of manufacturing, bottling or otherwise producing nonintoxicating beer or nonintoxicating  
101 craft beer for sale at wholesale.

102 (18) "Person" means and includes an individual, firm, partnership, limited partnership,  
103 limited liability company, association or corporation.

104 (19) "Private club" means a license issued pursuant to article seven, chapter sixty of this  
105 code.

106 (20) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or  
107 nonintoxicating craft beer whose principal place of business and manufacture is located in the

108 state of West Virginia and which does not brew or manufacture more than twenty-five thousand  
109 barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute  
110 more than ten thousand barrels thereof in the state of West Virginia annually.

111 (21) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating  
112 beer and all products regulated by this article, including, but not limited to, malt coolers at his or  
113 her established and licensed place of business.

114 (22) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or  
115 the commissioner's designee.

**§11-16-4. Responsibility of ~~Alcohol Beverage Control Commissioner~~ State Lottery  
Commission; administrators, employees and agents; administration and  
enforcement expenses.**

1 (a) ~~The Alcohol Beverage Control Commissioner described under the provisions of article~~  
2 ~~two, chapter sixty of this code~~ The State Lottery Commission shall have sole responsibility for the  
3 administration of this article, except for those responsibilities expressly vested in the Tax  
4 Commissioner under sections thirteen, fourteen and fifteen of this article.

5 All acts heretofore performed by the ~~nonintoxicating beer~~ Alcohol Beverage Control  
6 Commissioner under previous proceedings of this article are hereby again ratified and confirmed,  
7 and the ~~commissioner~~ lottery commission shall succeed to the same position previously  
8 maintained by the ~~nonintoxicating beer~~ Alcohol Beverage Control Commissioner in all  
9 proceedings and official acts instituted and perfected under the provisions of this article prior to  
10 the effective date of this section.

11 (b) ~~The commissioner~~ lottery commission shall appoint an adequate number of competent  
12 persons to serve as administrators, employees and agents of the ~~commissioner~~ lottery  
13 commission for the purpose of keeping all necessary accounts and records required under the  
14 provisions of this article; investigating the books, accounts, records and other papers of retailers,  
15 distributors and brewers; investigating applicants for license and the places of business of

16 retailers, distributors and brewers; procuring evidence with respect to violations of the provisions  
17 of this article, and particularly for use at hearings held by the ~~commissioner~~ lottery commission  
18 and on proceedings instituted in court for the purpose of revoking or suspending licenses  
19 hereunder; and such administrators, employees and agents shall perform such other duties as  
20 the ~~commissioner~~ lottery commission may direct. Such administrators, employees and agents  
21 shall have the right to enter any licensed premises in the state in the performance of their duties  
22 at any hour of the day or night when beer is being sold or consumed on such licensed premises.  
23 Refusal by any licensee or by any employee of a licensee to permit such administrators,  
24 employees or agents to enter the licensed premises shall be an additional cause for revocation  
25 or suspension of the license of such licensee by the ~~commissioner~~ lottery commission. The  
26 compensation of such administrators, employees and agents shall be fixed by the ~~commissioner~~  
27 lottery commission: *Provided*, That the ~~commissioner~~ lottery commission may employ up to  
28 eleven special investigators who shall be nonclassified exempt employees of the division.

29 (c) Services rendered the state by clerks, sheriffs, commissioners in chancery and special  
30 commissioners, designated by the court, and court reporters and stenographers performing  
31 services for said ~~commissioner~~ lottery commission and fees of witnesses summoned on behalf of  
32 the state in proceedings to revoke or suspend retailer's licenses shall be treated as part of the  
33 expenses of administration and enforcement, and such officers and said other persons shall be  
34 paid the same fees and charges as would be chargeable for like services performed for an  
35 individual; and the compensation of such clerks, sheriffs and other persons shall be paid out of  
36 the amount allocated for the expense of administration enforcement, after the amount of such  
37 fees and other charges shall be certified by the court to the Auditor.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22D. ALCOHOL BEVERAGE, BEER AND WINE ADMINISTRATION; DISTRIBUTOR LICENSES; TAX ON ALCOHOL BEVERAGES.**



**§29-22D-1. Transfer of duties of alcohol beverage control commissioner to State Lottery****Commission.**

1        On July 1, 2017, the State Lottery Commission shall begin exercising all powers and duties  
2 formerly exercised by the alcohol beverage control commissioner under the provisions of article  
3 sixteen, chapter eleven and chapter sixty of this code.

**§29-22D-2. Licenses for distributors of alcohol beverages.**

1        (a) Beginning July 1, 2017, all alcohol beverages may only be distributed to retailers by  
2 licensed alcohol beverage distributors: *Provided*, That no liquor may be sold by distributors until  
3 all liquor still in the possession of the alcohol beverage control commissioner or its successors  
4 has been sold. Initially, all persons who have contracted with the alcohol beverage control  
5 commission to supply alcohol beverages which the commission sold to retailers are automatically  
6 licensed as distributors under this section. In addition, persons presently licensed to distribute  
7 beer or wine may choose to become licensed distributors of alcohol beverages with no further  
8 requirements.

9        (b) The lottery director shall by legislative rule promulgated under the provisions of article  
10 three, chapter twenty-nine-a of this code and approved by the Legislature establish the  
11 requirements to be licensed as an alcohol beverage distributor. All alcohol beverage distributor  
12 licenses shall be issued by the director.

**§29-22D-3. Per case tax on all alcohol beverages.**

1        (a) There is hereby levied a tax of twenty-eight percent of the value of every case of alcohol  
2 beverages distributed by distributors to retailers.

3        (b) The State Tax Commissioner shall determine how such tax shall be collected and be  
4 paid to the state. The proceeds of the tax shall be placed in the General Revenue Fund of the  
5 state.

**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" means 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" means any beverage obtained by the fermentation of barley, malt,  
7 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" means any alcoholic beverage obtained by the fermentation of the natural content  
10 of fruits, or other agricultural products, containing sugar.

11 "Spirits" means 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" includes alcohol, beer, wine and spirits and any liquid or solid capable  
14 of being used as a beverage, but shall not include nonintoxicating beer.

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

17 "Sale" means 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" includes solicitation or receipt of orders; possession for sale; and possession with  
20 intent to sell.

21 "Person" means 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" means any person engaged in the manufacture of any alcoholic liquor, and  
26 among others includes a distiller, a rectifier, a wine maker and a brewer.

27 "Brewery" means an establishment where beer is manufactured or in any way prepared.

28 "Winery" means an establishment where wine is manufactured or in any way prepared.

29 "Distillery" means an establishment where alcoholic liquor other than wine or beer is  
30 manufactured or in any way prepared.

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

47 ~~"State liquor store means a store established and operated by the commission under this~~  
48 ~~chapter for the sale of alcoholic liquor in the original package for consumption off the premises.~~

49 ~~"An agency" means a drugstore, grocery store or general store designated by the~~  
50 ~~commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control~~

51 ~~Commissioner.~~

52 ~~"Department" means the organization through which the commission exercises powers~~  
 53 ~~imposed upon it by this chapter.~~

54 ~~"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control~~  
 55 ~~Commissioner State Lottery Commission.~~

56 "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point  
 57 where physical or mental control or both are markedly diminished.

58 "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form for  
 59 either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter,  
 60 powdered alcohol excludes any material intended for industrial purposes.

## **ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER ABOLISHED.**

### **§60-2-1. Office created; powers and functions generally; office of ~~liquor control~~ alcohol beverage control commissioner abolished and powers transferred.**

1 (a) To accomplish the purposes of this chapter there is hereby created the office of West  
 2 Virginia Alcohol Beverage Control Commissioner. The commissioner shall have and is hereby  
 3 granted all of the powers and authority and shall perform all of the functions and services  
 4 heretofore vested in and performed by the West Virginia liquor control commissioner. The office  
 5 of the West Virginia liquor control commissioner is hereby abolished. Wherever in this chapter  
 6 and elsewhere in law reference is made to the West Virginia liquor control commissioner or liquor  
 7 control commission such reference shall henceforth be construed and understood to mean the  
 8 West Virginia Alcohol Beverage Control Commissioner. All parts and provisions of this chapter  
 9 rendered meaningless and inapplicable by the provisions hereof are hereby modified and  
 10 amended so that the provisions of this chapter will be consistent and harmonious in their entirety.

11 (b) On July 1, 2017, the entity of alcohol beverage control commissioner is hereby  
 12 abolished and shall cease to exercise any functions contained in this chapter and article sixteen,

- 13 chapter eleven of this code. All powers and duties formerly exercised by the commissioner are  
14 hereby transferred to, and shall be exercised by the State Lottery Commission. Any references  
15 in this chapter and article sixteen, chapter eleven of this code to the alcohol beverage control  
16 commissioner shall be read as the lottery commission.

NOTE: The purpose of this bill is to abolish the Alcohol Beverage Control Commissioner; transferring its powers and duties to the State Lottery Commission; creating alcohol beverage distributors licenses; and creating a per case tax on alcohol.

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