

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Originating

House Bill 3146

BY DELEGATE HOWELL

[Originating in the Committee on Government
Organization; Reported on February 22, 2019.]

1 A BILL to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended, relating
2 to requiring retail licensees to purchase a minimum amount of the available SKUs from
3 the commissioner; removing square footage requirements to conduct or restrict alcohol
4 sales; establishing certain conditions for a retail licensee to display at least one of every
5 SKU for sale by a retail licensee to its patrons; requiring the commissioner to supply or
6 reasonably attempt to supply a prepaid order for a retail licensee; and establishing an
7 effective date for changes to this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

**§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from
state; transportation and storage; method of payment; removing square footage
requirements to conduct alcohol sales; special orders through retail licensees.**

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to
2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according
3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor
4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to §60-
5 4-3 of this code.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General
7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to
8 the average for the past three years. The net revenue derived from the sale of alcoholic liquors
9 shall be deposited into the General Revenue Fund in the manner provided in §60-3-17 of this
10 code.

11 (c) Notwithstanding any provision of this code to the contrary, the commissioner shall
12 specify the maximum wholesale markup percentage which may be applied to the prices paid by
13 the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor,
14 other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other

15 than wine, for resale in this state only from the commissioner, and the provisions of §60-6-12 and
16 §60-6-13 of this code shall not apply to the transportation of the liquor. A retail licensee must
17 purchase at least 200 of the available stock keeping units (“SKUs”) the commissioner offers at
18 the warehouse where the retail licensee purchases its liquor: *Provided*, That a retail licensee shall
19 purchase wine from a wine distributor who is duly licensed under §60-8-1 *et seq.* of this code. All
20 liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet
21 or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her
22 discretion, may upon written request permit a retail licensee to store liquor at a site other than the
23 retail outlet or outlets.

24 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic
25 funds transfer which shall be initiated by the commissioner on the business day following the retail
26 licensees order or by money order, certified check or cashier’s check which shall be received by
27 the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if
28 a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety
29 acceptable to the commissioner from a financial institution acceptable to the commissioner
30 guaranteeing payment of checks, then the commissioner may accept the retail licensee’s checks
31 in an amount up to the amount of the letter of credit.

32 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-
33 7-1 *et seq.* of this code at less than ~~44~~ 115 percent of the retail licensee’s cost as defined in §47-
34 11A-6 of this code.

35 (2) A retail licensee may not sell liquor to the general public at less than ~~44~~ 115 percent
36 of the retail licensee’s cost as defined in §47-11A-6 of this code.

37 (f) The commissioner is not permitted to require a retail licensee to have a particular
38 amount of square footage to conduct alcohol sales or to limit alcohol sales: *Provided*, That a retail
39 licensee have enough shelf or display space to display at least one of every SKU offered for sale
40 to its patrons.

41 (g) The commissioner is not permitted to deny any special order or prepaid order from a
42 retail licensee attempting to procure the product for the retail licensee's patron. The commissioner
43 may supply the order through a warehouse's standard stock or its special-order stock. If the
44 commissioner does not have the prepaid order in stock at any warehouse in this state, the
45 commissioner must make reasonable attempts to procure the order for the retail licensee.

46 (h) (h) The requirement to purchase at least 200 SKUs in subsection (c) does not go into
47 effect for the current 2010-2020 licensing period but will be effective for the upcoming licensing
48 period, designated 2020-2030, and for all future licensing periods.

NOTE: The purpose of this bill is to require retail licensees to purchase a minimum amount of the available SKUs from the commissioner; remove square footage requirements to conduct or restrict alcohol sales; establish certain conditions for a retail licensee to display at least one of every SKU for sale by a retail licensee to its patrons; require the commissioner to supply or reasonably attempt to supply a prepaid order for a retail licensee; and establish an effective date for changes to this article.

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