

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4770

BY DELEGATES ROWE, WESTFALL AND STEELE

[Introduced February 10, 2020; Referred to the
Committee on 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 changing the beginning time for beer and wine sales on Sunday from
 4 one p.m. to 10 a.m.

Be it enacted by the Legislature of West Virginia:

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, her, its or their servants, agents, or employees to sell, give, or
 3 dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms
 4 directly connected, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m.
 5 and 7:00 a.m., or between the hours of 2:00 a.m. and 10:00 a.m., or a Class A retail dealer who
 6 sells nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and
 7 ~~4:00 p.m.~~ 10 a.m. in any county upon approval as provided for in §7-1-3ss of this code, on any
 8 Sunday, except in private clubs licensed under the provisions of §60-7-1 et seq. of this code,
 9 where the hours shall conform with the hours of sale of alcoholic liquors;

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

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

16 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
 17 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to

18 collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein
19 contained in this section prohibits a licensee from crediting to a purchaser the actual price charged
20 for packages or containers returned by the original purchaser as a credit on any sale, or from
21 refunding to any purchaser the amount paid or deposited for the containers when title is retained
22 by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the
23 transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the
24 nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and
25 the distributor shall initiate the transfer no later than noon of one business day after the delivery;

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

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

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

39 (8) For any licensee except the holder of a license to operate a private club issued under
40 the provisions of §60-7-1 et seq. of this code or a holder of a license or a private wine restaurant
41 issued under the provisions of §60-8-1 et seq. of this code to possess a federal license, tax receipt
42 or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other
43 than nonintoxicating beer;

44 (9) For any licensee to obstruct the view of the interior of his or her premises by enclosure,
45 lattice, drapes, or any means which would prevent plain view of the patrons occupying the
46 premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided,*
47 That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises
48 of a private club licensed under the provisions of §60-7-1 et seq. of this code, or the premises of
49 a private wine restaurant licensed under the provisions of §60-8-1 et seq. of this code;

50 (10) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in
51 the sale, possession, or consumption of any alcoholic liquors on the premises covered by a
52 license or on premises directly or indirectly used in connection with it: *Provided,* That the
53 prohibition contained in this subdivision with respect to the selling or possessing or to the
54 acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with
55 respect to the holder of a license to operate a private club issued under the provisions of §60-7-
56 1 et seq. of this code nor shall the prohibition be applicable to a private wine restaurant licensed
57 under the provisions of §60-8-1 et seq. of this code insofar as the private wine restaurant is
58 authorized to serve wine;

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

62 (12) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon
63 his or her premises or to permit the use of loud musical instruments if either or any of the same
64 may disturb the peace and quietude of the community where the business is located: *Provided,*
65 That a licensee may have speaker systems for outside broadcasting so long as the noise levels
66 do not create a public nuisance or violate local noise ordinances;

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

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

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

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

76 (17) For any Class A licensee, his, her, its or their servants, agents, or employees, or for
77 any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any
78 person less than 18 years of age to loiter in or upon any licensed premises; except, however, that
79 the provisions of this subdivision do not apply where a person under the age of 18 years is in or
80 upon the premises in the immediate company of his or her parent or parents, or where and while
81 a person under the age of 18 years is in or upon the premises for the purpose of and actually
82 making a lawful purchase of any items or commodities therein sold, or for the purchase of and
83 actually receiving any lawful service therein rendered, including the consumption of any item of
84 food, drink or soft drink therein lawfully prepared and served or sold for consumption on the
85 premises;

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

94 (19) For any licensee or any agent, servant, or employee of any licensee to knowingly
95 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of

96 chapter 29A of this code.

97 (b) Any person who violates any provision of this article including, but not limited to, any
98 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
99 makes any false statement concerning any material fact in submitting application for license or
100 for a renewal of a license or in any hearing concerning the revocation thereof, or who commits
101 any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction
102 thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or
103 confined in the county or regional jail for not less than 30 days nor more than six months, or by
104 both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any
105 other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising
106 under this article.

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

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

109 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of
110 any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the
111 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
112 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
113 or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of
114 nonintoxicating beer to an individual who is less than 21 years of age by one of his or her
115 employees, servants, or agents. Any agent, servant, or employee who has improperly sold,
116 furnished or given away nonintoxicating beer to an individual less than 21 years of age is subject
117 to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who
118 has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21
119 years of age is subject to termination from employment, and the employer shall have no civil
120 liability for the termination.

121 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each

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

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

134 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or
135 be considered to prohibit any licensee from employing any person who is at least 18 years of age
136 to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as
137 defined in this article. With the prior approval of the commissioner, a licensee whose principal
138 business is the sale of food or consumer goods or the providing of recreational activities, including,
139 but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling
140 alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons
141 who are less than 18 years of age but at least 16 years of age: *Provided*, That the person's duties
142 may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided*,
143 *however*, That the authorization to employ persons under the age of 18 years shall be clearly
144 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, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured
4 from the original package or container, except as authorized in §60-6-8 of this code;

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; however, various
8 games, gaming, and wagering conducted by duly licensed persons of the West Virginia State
9 Lottery Commission, charitable bingo games conducted by duly licensed charitable or public
10 service organization (or its auxiliaries), pursuant to §47-20-1 et seq. of this code, and charitable
11 raffle games conducted by a duly licensed charitable or public service organization (or its
12 auxiliaries), pursuant to §47-21-1 et seq. of this code, all of which are permissible on a licensee's
13 licensed premises when operated in accordance with this code, rules, and regulations: *Provided,*
14 That a private resort hotel holding a license issued pursuant to §60-7-1 et seq. of this code, may
15 sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises
16 licensed under §29-22A-1 et seq. and §29-22C-1 et seq., or §29-25-1 et seq. of this code, during
17 hours of operation authorized by §29-22A-1 et seq. and §29-22C-1 et seq., or §29-25-1 et seq. of
18 this code;

19 (3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating
20 beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine,
21 or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

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

26 (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any
27 licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m.
28 and 7:00 a.m. on weekdays or Saturdays, between the hours of 3:00 a.m. and 10:00 a.m. on any
29 Sunday or, between the hours of 3:00 a.m. and ~~4:00 p.m.~~ 10 a.m. in any county upon approval
30 as provided for in §7-1-3ss of this code, on any Sunday; and

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

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

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

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

41 (10)(A) Employ any person who is less than 18 years of age in a position where the primary
42 responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer,
43 wine, or alcoholic liquors to any person;

44 (B) Employ any person who is between the ages of 18 and 21 who is not directly
45 supervised by a person aged 21 or over in a position where the primary responsibility for such
46 employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors
47 to any person; or

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

49 (b) It is lawful for any licensee to advertise price and brand in any news media or other
50 means, outside of the licensee's premises.

51 (c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor

52 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or
53 imprisoned in 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 2:00 a.m. and 10:00 a.m. or, it
4 shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine
5 restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between
6 the hours of 2:00 a.m. and ~~4:00 p.m.~~ 10 a.m. in any county upon approval as provided for in §7-
7 1-3ss of this code, on Sundays, or between the hours of 2:00 a.m. and 7:00 a.m. on weekdays
8 and Saturdays.

NOTE: The purpose of this bill is to allow the sale of beer and wine beginning at 10 a.m.
on Sundays.

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