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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 530

(By Senator Anderson)

PASSED March 9, 2002

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 530

(SENATOR ANDERSON, *original sponsor*)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article eight, chapter sixty of said code, all relating to wine and nonintoxicating beer generally; and allowing retailers of wine and nonintoxicating beer to pay distributors by electronic funds transfer.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-two, article eight, chapter sixty of said code 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, her, its or their servants, agents
3 or employees to sell, give or dispense, or any individual to
4 drink or consume, in or on any licensed premises or in any
5 rooms directly connected therewith, nonintoxicating beer
6 or cooler on weekdays between the hours of two o'clock
7 a.m. and seven o'clock a.m., or between the hours of two
8 o'clock a.m. and one o'clock p.m., on any Sunday, except
9 in private clubs licensed under the provisions of article
10 seven, chapter sixty of this code, where the hours shall
11 conform with the hours of sale of alcoholic liquors;

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

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

21 (4) For any distributor to sell or offer to sell, or any
22 retailer to purchase or receive, any nonintoxicating beer as
23 defined in this article, except for cash and no right of
24 action shall exist to collect any claims for credit extended
25 contrary to the provisions of this subdivision. Nothing
26 herein contained shall prohibit a licensee from crediting to
27 a purchaser the actual price charged for packages or
28 containers returned by the original purchaser as a credit
29 on any sale, or from refunding to any purchaser the
30 amount paid or deposited for the containers when title is
31 retained by the vendor: *Provided*, That a distributor may

32 accept an electronic transfer of funds if the transfer of
33 funds is initiated by an irrevocable payment order on the
34 invoiced amount for the nonintoxicating beer. The cost of
35 the electronic fund transfer shall be borne by the retailer
36 and the distributor must initiate the transfer no later than
37 noon of one business day after the delivery;

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

42 (6) For any brewer or distributor to give, furnish, rent or
43 sell any equipment, fixtures, signs or supplies directly or
44 indirectly or through a subsidiary or affiliate to any
45 licensee engaged in selling products of the brewing
46 industry at retail, or to offer any prize, premium, gift or
47 other similar inducement, except advertising matter of
48 nominal value, to either trade or consumer buyers: *Pro-*
49 *vided*, That a distributor may offer, for sale or rent, tanks
50 of carbonic gas. Nothing herein contained shall prohibit
51 a brewer from sponsoring any professional or amateur
52 athletic event or from providing prizes or awards for
53 participants and winners in any events: *Provided, how-*
54 *ever*, That no event shall be sponsored which permits
55 actual participation by athletes or other persons who are
56 minors, unless specifically authorized by the commis-
57 sioner;

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

61 (8) For any licensee except the holder of a license to
62 operate a private club issued under the provisions of
63 article seven, chapter sixty of this code or a holder of a
64 license or a private wine restaurant issued under the
65 provisions of article eight of said chapter to possess a
66 federal license, tax receipt or other permit entitling,

67 authorizing or allowing such licensee to sell liquor or
68 alcoholic drinks other than nonintoxicating beer;

69 (9) For any licensee to obstruct the view of the interior of
70 his or her premises by enclosure, lattice, drapes or any
71 means which would prevent plain view of the patrons
72 occupying the premises. The interior of all licensed
73 premises shall be adequately lighted at all times: *Provided,*
74 That provisions of this subdivision do not apply to the
75 premises of a Class B retailer, the premises of a private
76 club licensed under the provisions of article seven, chapter
77 sixty of this code or the premises of a private wine restau-
78 rant licensed under the provisions of article eight of said
79 chapter;

80 (10) For any licensee to manufacture, import, sell, trade,
81 barter, possess or acquiesce in the sale, possession or
82 consumption of any alcoholic liquors on the premises
83 covered by such license or on premises directly or indi-
84 rectly used in connection therewith: *Provided,* That the
85 prohibition contained in this subdivision with respect to
86 the selling or possessing or to the acquiescence in the sale,
87 possession or consumption of alcoholic liquors is not
88 applicable with respect to the holder of a license to operate
89 a private club issued under the provisions of article seven,
90 chapter sixty of this code nor shall the prohibition be
91 applicable to a private wine restaurant licensed under the
92 provisions of article eight of said chapter insofar as such
93 private wine restaurant is authorized serve wine;

94 (11) For any retail licensee to sell or dispense nonintoxi-
95 cating beer, as defined in this article, purchased or ac-
96 quired from any source other than a distributor, brewer or
97 manufacturer licensed under the laws of this state;

98 (12) For any licensee to permit loud, boisterous or
99 disorderly conduct of any kind upon his or her premises or
100 to permit the use of loud musical instruments if either or
101 any of the same may disturb the peace and quietude of the
102 community wherein the business is located: *Provided,* That

103 no licensee may have in connection with his or her place of
104 business any loudspeaker located on the outside of the
105 licensed premises that broadcasts or carries music of any
106 kind;

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

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

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

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

120 (17) For any Class A licensee, his, her, its or their ser-
121 vants, agents or employees, or for any licensee by or
122 through any servants, agents or employees, to allow, suffer
123 or permit any person less than eighteen years of age to
124 loiter in or upon any licensed premises; except, however,
125 that the provisions of this subdivision do not apply where
126 a person under the age of eighteen years is in or upon the
127 premises in the immediate company of his or her parent or
128 parents, or where and while a person under the age of
129 eighteen years is in or upon the premises for the purpose of
130 and actually making a lawful purchase of any items or
131 commodities therein sold, or for the purchase of and
132 actually receiving any lawful service therein rendered,
133 including the consumption of any item of food, drink or
134 soft drink therein lawfully prepared and served or sold for
135 consumption on the premises;

136 (18) For any distributor to sell, offer for sale, distribute
137 or deliver any nonintoxicating beer outside the territory

138 assigned to any distributor by the brewer or manufacturer
139 of nonintoxicating beer or to sell, offer for sale, distribute
140 or deliver nonintoxicating beer to any retailer whose
141 principal place of business or licensed premises is within
142 the assigned territory of another distributor of such
143 nonintoxicating beer: *Provided*, That nothing herein shall
144 be deemed to prohibit sales of convenience between
145 distributors licensed in this state wherein one distributor
146 sells, transfers or delivers to another distributor a particu-
147 lar brand or brands for sale at wholesale; and

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

152 (b) Any person who violates any provision of this article
153 including, but not limited to, any provision of this section,
154 or any rule, regulation or order lawfully promulgated by
155 the commissioner, or who makes any false statement
156 concerning any material fact in submitting application for
157 license or for a renewal of a license or in any hearing
158 concerning the revocation thereof, or who commits any of
159 the acts herein declared to be unlawful shall be guilty of a
160 misdemeanor and shall be punished for each offense by a
161 fine of not less than twenty-five nor more than five
162 hundred dollars, or imprisoned in the county jail for not
163 less than thirty days nor more than six months, or by both
164 fine and imprisonment in the discretion of the court.
165 Magistrates shall have concurrent jurisdiction with the
166 circuit court and any other courts having criminal juris-
167 diction in their county for the trial of all misdemeanors
168 arising under this article.

169 (c) Nothing in this article nor any rule or regulation of
170 the commissioner shall prevent or be deemed to prohibit
171 any licensee from employing any person who is at least
172 eighteen years of age to serve in the licensee's lawful
173 employ, including the sale or delivery of nonintoxicating
174 beer as defined in this article. With the prior approval of

175 the commissioner, a licensee whose principal business is
176 the sale of food or consumer goods or the providing of
177 recreational activities, including, but not limited to,
178 nationally franchised fast food outlets, family-oriented
179 restaurants, bowling alleys, drug stores, discount stores,
180 grocery stores and convenience stores, may employ persons
181 who are less than eighteen years of age but at least sixteen
182 years of age: *Provided*, That the person's duties shall not
183 include the sale or delivery of nonintoxicating beer or
184 alcoholic liquors: *Provided, however*, That the authoriza-
185 tion to employ persons under the age of eighteen years
186 shall be clearly indicated on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 8. SALE OF WINES.

§60-8-22. Sales on credit prohibited; exception.

1 It shall be unlawful for a distributor to sell or offer to
2 sell, or a retailer to purchase or receive, any wine except
3 on a cash basis and no right of action exists to collect any
4 claims for credit extended contrary to the provisions of
5 this subdivision: *Provided*, That nothing herein prohibits,
6 as a credit on any subsequent sale, the crediting of the
7 purchase price charged for wine returned by the purchaser
8 because of damage, spoilage, erroneous shipments or
9 orders and other such reasons customary in the trade:
10 *Provided, however*, That a distributor may accept an
11 electronic transfer of funds if the transfer of funds is
12 initiated by an irrevocable payment order on the invoiced
13 amount for the wine. The cost of the electronic fund
14 transfer must be born by the retailer and the distributor
15 must initiate the transfer no later than noon of one
16 business day after the delivery.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly Ann
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2002.

[Signature]
.....
Governor

CONFIDENTIAL

CONFIDENTIAL

Date: 3/26/02

Time: 3:15 p