

**H. B. 4510**

(By Delegate Lane (By Request))

[Introduced February 13, 2012; referred to the  
Committee on the Judiciary.]

10 A BILL to amend and reenact §11-16-8 of the Code of West Virginia,  
11 1931, as amended; to amend and reenact §29-22B-1202 of said  
12 code; amend and reenact §60-3A-16 of said code; and to amend  
13 and reenact §60-7-10 of said code, all relating to increasing  
14 the distance that certain state-regulated activities must be  
15 located from a public playground, day care facility, school or  
16 church from three hundred to two thousand feet; increasing the  
17 distance that a beer licensee must be located from a public  
18 playground, day care facility, school or church from three  
19 hundred to two thousand feet; and providing that a limited  
20 video lottery retailer licensee, a retail liquor licensee and  
21 a private club licensee may not be located within two thousand  
22 feet of a public playground, day care facility, school or  
23 church.

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

1 That §11-16-8 of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted; that §29-22B-1202 of said code be amended  
3 and reenacted; that §60-3A-16 of said code be amended and  
4 reenacted; and that §60-7-10 of said code be amended and reenacted,  
5 all to read as follows:

6 **CHAPTER 11. TAXATION.**

7 **ARTICLE 16. NONINTOXICATING BEER.**

8 **§11-16-8. Form of application for license; fee and bond; refusal**  
9 **of license.**

10 (a) A license may be issued by the commissioner to any person  
11 who submits an application ~~therefor~~ for a license, accompanied by  
12 a license fee, and, where required, a bond, stating under oath:

13 (1) The name and residence of the applicant, the duration of  
14 ~~such~~ the residency, that the applicant has been a resident of the  
15 state for a period of two years next preceding the date of the  
16 application and that the applicant is twenty-one years of age. If  
17 the applicant is a firm, association, partnership, limited  
18 partnership or corporation, the application shall include the  
19 residence of the members or officers for a period of two years next  
20 preceding the date of ~~such~~ the application: *Provided*, That if any  
21 person, firm, partnership, limited partnership, association or  
22 corporation applies for a license as a distributor, ~~such~~ the  
23 person, or in the case of a firm, partnership, limited partnership

1 or association, the members or officers thereof shall state under  
2 oath that each has been a bona fide resident of the state for four  
3 years preceding the date of ~~such~~ the application;

4 (2) The place of birth of applicant, that he or she is a  
5 citizen of the United States and of good moral character and, if a  
6 naturalized citizen, when and where naturalized; and, if a  
7 corporation organized or authorized to do business under the laws  
8 of the state, when and where incorporated, with the name and  
9 address of each officer; that each officer is a citizen of the  
10 United States and a person of good moral character; and if a firm,  
11 association, partnership or limited partnership, the place of birth  
12 of each member of the firm, association, partnership or limited  
13 partnership, and that each member is a citizen of the United States  
14 and if a naturalized citizen, when and where naturalized, each of  
15 whom must qualify and sign the application: *Provided*, That the  
16 requirements as to residence ~~shall~~ do not apply to the officers of  
17 a corporation which ~~shall~~ apply for a retailer's license, but the  
18 officers, agent, or employee who ~~shall~~ manage and ~~be~~ are in charge  
19 of the licensed premises shall possess all of the qualifications  
20 required of an individual applicant for a retailer's license,  
21 including the requirement as to residence;

22 (3) The particular place for which the license is desired and  
23 a detailed description ~~thereof~~ of the place;

24 (4) The name of the owner of the building and, if the owner is

1 not the applicant, that ~~such~~ the applicant is the actual and bona  
2 fide lessee of the premises;

3 (5) That the place or building in which is proposed to do  
4 business conforms to all laws of health, fire and zoning  
5 regulations applicable thereto, and is a safe and proper place or  
6 building, and is not within ~~three hundred~~ two thousand feet of any  
7 government building, public play ground, day care facility, school  
8 or church, measured from front door to front door ~~along the street~~  
9 ~~or streets~~ in a straight line: *Provided*, That this requirement  
10 ~~shall~~ does not apply to a Class B license, or to any place now  
11 occupied by a beer licensee, so long as it is continuously so  
12 occupied: *Provided, however*, That the prohibition against locating  
13 any ~~such~~ proposed business in a place or building within ~~three~~  
14 ~~hundred~~ two thousand feet of any school ~~shall~~ does not apply to any  
15 college or university that has notified the commissioner, in  
16 writing, that it has no objection to the location of any such  
17 proposed business in a place or building within ~~three hundred~~ two  
18 thousand feet of ~~such~~ the college or university;

19 (6) That the applicant is not incarcerated and has not during  
20 the five years immediately preceding the date of ~~said~~ the  
21 application been convicted of a felony;

22 (7) That the applicant is the only person in any manner  
23 pecuniarily interested in the business so asked to be licensed, and  
24 that no other person shall be in any manner pecuniarily interested

1 therein during the continuance of the license; and

2 (8) That the applicant has not during five years next  
3 immediately preceding the date of ~~said~~ the application had a  
4 nonintoxicating beer license revoked.

5 (b) The provisions and requirements of subsection (a) of this  
6 section are mandatory prerequisites for the issuance, and in the  
7 event any applicant fails to qualify under the same, license shall  
8 be refused. In addition to the information furnished in any  
9 application, the commissioner may make ~~such~~ additional and  
10 independent investigation of each applicant, and of the place to be  
11 occupied, as ~~deemed~~ considered necessary or advisable; and for this  
12 reason each and all applications, with license fee and bond, must  
13 be filed thirty days prior to the beginning of any fiscal year, and  
14 if application is for an unexpired portion of any fiscal year,  
15 issuance of license may be withheld for ~~such~~ a reasonable time as  
16 necessary for investigation.

17 (c) The commissioner may refuse a license to any applicant  
18 under the provisions of this article if the commissioner ~~shall be~~  
19 is of the opinion:

20 (1) That the applicant is not a suitable person to be  
21 licensed;

22 (2) That the place to be occupied by the applicant is not a  
23 suitable place; or is within ~~three hundred~~ two thousand feet of any  
24 government building, public playground, day care facility, school

1 or church, measured from front door to front door ~~along the street~~  
 2 ~~or streets~~ in a straight line: *Provided*, That this requirement  
 3 ~~shall~~ does not apply to a Class B licensee, or to any place now  
 4 occupied by a beer licensee, so long as it is continuously so  
 5 occupied: *Provided, however*, That the prohibition against locating  
 6 any ~~such~~ place to be occupied by an applicant within ~~three hundred~~  
 7 two thousand feet of any school ~~shall~~ does not apply to any college  
 8 or university that has notified the commissioner, in writing, that  
 9 it has no objection to the location of any ~~such~~ place within ~~three~~  
 10 ~~hundred~~ two thousand feet of such college or university; or

11 (3) That the license should not be issued for reason of  
 12 conduct declared to be unlawful by this article.

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

14 **ARTICLE 22B. LIMITED VIDEO LOTTERY.**

15 **§29-22B-1202. No limited video lottery retailer license for**  
 16 **premises within one hundred feet of another**  
 17 **licensed premises; no two license retailer**  
 18 **locations within a common structure.**

19 (a) A limited video lottery retailer license may not be  
 20 granted for operation of video lottery terminals on a premises if,  
 21 at the time of application for the license, the applicant's  
 22 premises are within one hundred fifty feet of, or has an external  
 23 structural connection not amounting to a common internal wall to,

1 a premises that already has a license for video lottery terminals.

2 (1) A measurement of the distance between two premises must be  
3 taken between the nearest exterior wall of each premises.

4 (2) When determining common ownership, the commission shall  
5 consider direct as well as indirect ownership.

6 (3) The place to be occupied by an applicant may not be  
7 located within two thousand feet of any government building, public  
8 playground, day care facility, school or church: Provided, That  
9 this provision does not apply to any college or university that has  
10 notified the commissioner, in writing, that it has no objection to  
11 the location of any limited video lottery retailer licensee within  
12 two thousand feet of the college or university: Provided, however,  
13 That the provisions of this subdivision do not apply to the  
14 location of licensees operating under a valid license on the  
15 effective date of this subdivision. The provisions of this  
16 subdivision are applicable to any current location that ceases to  
17 be licensed and an applicant applies for a new license at that  
18 location.

19 (b) A premises for which a private club license to dispense  
20 alcoholic liquors, under provisions of article seven, chapter sixty  
21 of this code, or a Class A nonintoxicating beer license, under the  
22 provisions of article sixteen, chapter eleven of this code, was  
23 granted, was applied for, or the transfer of which was validly  
24 contracted for prior to January 1, 2001, is not subject to

1 subsections (a) and (c) of this section.

2 (c) No more than one restricted access adult-only facility  
3 shall hold a limited video lottery retailer license to offer video  
4 lottery terminals in any single structure under one roof.

5 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

6 **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

7 **§60-3A-16. Restriction on location of retail outlets.**

8 No retail outlet may be located within ~~the immediate vicinity~~  
9 ~~of a school or church: Provided, That the provisions of this~~  
10 ~~section shall not apply to the location of a retail licensee who,~~  
11 ~~on the date of the passage of this act, holds a license for the~~  
12 ~~retail sale of wine, fortified wine or nonintoxicating beer at such~~  
13 ~~location~~ two thousand feet of any government building, public  
14 playground, day care facility, school or church: Provided, That  
15 this provision does not apply to any college or university that has  
16 notified the commissioner, in writing, that it has no objection to  
17 the location of any limited video lottery retailer licensee within  
18 two thousand feet of the college or university: Provided, however,  
19 That the provisions of this section do not apply to the location of  
20 licensees operating under a valid license on the effective date of  
21 this section. The provisions of this section are applicable to any  
22 current location that ceases to be licensed and an applicant  
23 applies for a new license at that location.



1 **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

2 **§60-7-10. Duties and powers of commissioner.**

3 The commissioner is hereby authorized:

4 (a) To enforce the provisions of this article.

5 (b) To enter the premises of any licensee at reasonable times  
6 for the purpose of inspecting the same, and determining the  
7 compliance of said licensee with the provisions of this article and  
8 any rules ~~and regulations~~ promulgated by the commissioner pursuant  
9 to the provisions of this article.

10 (c) To promulgate such reasonable rules ~~and regulations~~ for  
11 legislative approval as may be necessary for the execution and  
12 enforcement of the provisions of this article, which may include,  
13 but ~~shall~~ are not ~~be~~ limited to, the hours during which licensees  
14 may sell alcoholic liquors, and the use, handling, service and sale  
15 of such alcoholic liquors. ~~Such~~ The rules ~~and regulations~~ shall be  
16 ~~promulgated~~ proposed in accordance with the provisions of article  
17 three, chapter twenty-nine-a of the code in like manner as if said  
18 article three of said chapter twenty-nine-a were set forth in  
19 extenso in this subdivision.

20 (d) To issue subpoenas and subpoenas duces tecum for the  
21 purposes of conducting hearings under the provisions of section  
22 thirteen of this article, which subpoenas and subpoenas duces tecum  
23 shall be issued in the time, for the fees, and shall be enforced in  
24 the manner specified in section one, article five, chapter

1 twenty-nine-a of this code with like effect as if said section one  
2 were set forth in extenso in this subdivision.

3 The commissioner shall refuse an application by an applicant  
4 if the place to be occupied by an applicant is located within two  
5 thousand feet of any government building, public playground, day  
6 care facility, school or church: *Provided*, That this provision does  
7 not apply to any college or university that has notified the  
8 commissioner, in writing, that it has no objection to the location  
9 of the place to be occupied by the applicant if within two thousand  
10 feet of the college or university: *Provided*, however, That the  
11 provisions of this subsection do not apply to the location of  
12 licensees operating under a valid license on the effective date of  
13 this subsection. The provisions of this section are applicable to  
14 any current location that ceases to be licensed and an applicant  
15 applies for a new license at that location.

16 The authority granted in subdivisions (a), (b), and (d) of  
17 this section may also be exercised by the duly authorized agents of  
18 the commissioner.

NOTE: The purpose of this bill is to increase the distance that a beer licensee must be located from a school or church from three hundred to two thousand feet and includes government buildings, public playgrounds and day care facilities as locations requiring a two thousand foot distance for a beer licensee business and to provide that a limited video lottery retailer licensee, a retail liquor licensee, and a private club licensee may not be located within two thousand feet of a government building, public playground, day care facility, school or church.

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