

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 498**

7 (SENATOR PALUMBO, *original sponsor*)

8 _____
9 [Passed April 13, 2013; to take effect July 1, 2013.]
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12
13 AN ACT to amend and reenact §11-16-24 of the Code of West Virginia,
14 1931, as amended; to amend and reenact §60-3A-28 of said code;
15 to amend and reenact §60-7-13a of said code; and to amend and
16 reenact §60-8-18 of said code, all relating to hearing and
17 appeal procedures for certain licenses issued by the Alcohol
18 Beverage Control Administration; requiring that appeals from
19 commissioner's decision to refuse to issue or renew certain
20 licenses be brought in the circuit court of Kanawha Country or
21 the circuit court in the county where the licensed premises is
22 proposed to be located or conduct sales; requiring that
23 appeals from the commissioner's decision regarding
24 disciplinary action against a licensee are to be brought in
25 the circuit court of Kanawha County or the circuit court in
26 the county where the proposed or licensed premises is located

1 or does conduct sales; and providing that the licensee
2 appealing the commissioner's decision is required to pay the
3 costs and fees incident to transcribing, certifying and
4 transmitting records pertaining to the appeal.

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

6 That §11-16-24 of the Code of West Virginia, 1931, as amended,
7 be amended and reenacted; that §60-3A-28 of said code be amended
8 and reenacted; that §60-7-13a of said code be amended and
9 reenacted; and that §60-8-18 of said code be amended and reenacted,
10 all to read as follows:

11 **CHAPTER 11. TAXATION.**

12 **ARTICLE 16. NONINTOXICATING BEER.**

13 **§11-16-24. Hearing on sanctioning of license; notice; review of**
14 **action of commissioner; clerk of court to furnish**
15 **commissioner copy of order or judgment of**
16 **conviction of licensee; assessment of costs;**
17 **procedure for appealing any final order of the**
18 **commissioner which revokes, suspends, sanctions or**
19 **denies the issuance or renewal of any license**
20 **issued under this article.**

21 (a) The commissioner may not revoke or suspend a license
22 issued pursuant to this article or impose a civil penalty
23 authorized under this article unless and until a hearing is held
24 after at least ten days' notice to the licensee of the time and
25 place of the hearing, which notice shall contain a statement or

1 specification of the charges, grounds or reasons for the proposed
2 contemplated action, and which is served upon the licensee as
3 notices under the West Virginia Rules of Civil Procedure or by
4 certified mail, return receipt requested, to the address for which
5 license was issued; at which time and place, so designated in the
6 notice, the licensee has the right to appear and produce evidence
7 in his or her behalf, and to be represented by counsel.

8 (b) The commissioner may summon witnesses in the hearings
9 before him or her, and fees of witnesses summoned on behalf of the
10 state in proceedings to sanction licenses shall be treated as a
11 part of the expenses of administration and enforcement. The fees
12 shall be the same as those in similar hearings in the circuit
13 courts of this state. The commissioner may, upon a finding of
14 violation, assess a licensee a sum not to exceed \$150 per violation
15 to reimburse the commissioner for expenditures for witness fees,
16 court reporter fees and travel costs incurred in holding the
17 hearing. Moneys so assessed shall be transferred to the
18 Nonintoxicating Beer Fund created by section twenty-three of this
19 article.

20 (c) If, at the request of the licensee or on his or her
21 motion, the hearing is continued and does not take place on the day
22 fixed by the commissioner in the notice of hearing, then the
23 licensee's license may be suspended until the hearing and decision
24 of the commissioner, and in the event of revocation or suspension
25 of the license, upon hearing before the commissioner, the licensee
26 is not permitted to sell beer pending an appeal as provided by this

1 article. Any person continuing to sell beer after his or her
2 license has been suspended or revoked, as hereinbefore provided, is
3 guilty of a misdemeanor and, shall be punished as provided in
4 section nineteen of this article.

5 (d) Notwithstanding the provisions of subsection (b), section
6 four, article five, chapter twenty-nine-a of this code, the action
7 of the commissioner in revoking, suspending, sanctioning or
8 refusing a license is subject to review by the circuit court of
9 Kanawha County or the circuit court in the county where the
10 proposed or licensed premises is located and will or does conduct
11 sales: *Provided*, That in all other respects, such review shall be
12 conducted in the manner provided in chapter twenty-nine-a of this
13 code. The petition for review must be filed with the circuit court
14 within thirty days following entry of the final order of
15 revocation, suspension, sanction or refusal issued by the
16 commissioner. An applicant or licensee obtaining an order for
17 review is required to pay the costs and fees incident to
18 transcribing, certifying and transmitting the records pertaining to
19 the matter to the circuit court. An application to the Supreme
20 Court of Appeals of West Virginia for a writ of error from any
21 final order of the circuit court in the matter shall be made within
22 thirty days from and after the entry of the final circuit court
23 order.

24 (e) All hearings, upon notice to show cause why license should
25 be revoked, suspended, sanctioned or refused, before the
26 commissioner shall be held in the offices of the commissioner in

1 Charleston, Kanawha County, unless otherwise provided by the
2 commissioner in the notice of hearing. When the hearing is held
3 elsewhere than in the commissioner's office, the licensee may be
4 required to make deposits of the estimated costs of the hearing.

5 (f) Whenever a licensee has been convicted of an offense
6 constituting a violation of the laws of this state or of the United
7 States relating to nonintoxicating beer, or alcoholic liquor, and
8 the conviction has become final, the clerk of the court in which
9 the licensee has been convicted shall forward to the commissioner
10 a certified copy of the order or judgment of conviction if the
11 clerk has knowledge that the person so convicted is a licensee,
12 together with the certification of the clerk that the conviction is
13 final.

14 (g) In the case of a Class B licensee with multiple licensed
15 locations, the commissioner may, in his or her discretion, revoke,
16 suspend or otherwise sanction, per the provisions of section
17 twenty-three of this article, only the license for the location or
18 locations involved in the unlawful conduct for which licensure is
19 sanctioned, as opposed to all separately licensed locations of the
20 licensee.

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

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

23 **§60-3A-28. Notice of and hearing on revocation; right of appeal;**
24 **appeal procedures.**

25 (a) Before a retail license issued under the authority of this

1 article is suspended for a period of more than twenty days, or
2 revoked, the commissioner shall give at least ten days' notice to
3 the retail licensee. Notice shall be in writing, shall state the
4 reason for suspension or revocation, and shall designate a time and
5 place for a hearing where the retail licensee may show cause why
6 the retail license should not be suspended or revoked. Notice
7 shall be sent by certified mail to the address for which the retail
8 license was issued. The retail licensee may, at the time
9 designated for the hearing, produce evidence in his or her behalf
10 and be represented by counsel.

11 (b) The hearing and the administrative procedures prior to,
12 during and following the hearing are governed by and shall be
13 conducted in accordance with the provisions of article five,
14 chapter twenty-nine-a of this code in like manner as if the
15 provisions of article five were fully set forth in this section.

16 (c) Notwithstanding the provisions of subsection (b), section
17 four, article five, chapter twenty-nine-a of this code, any person
18 adversely affected by a final order entered following the hearing
19 has the right of judicial review by the circuit court of Kanawha
20 County or the circuit court in the county where the proposed or
21 licensed premises is located and will or does conduct sales:
22 *Provided*, That in all other respects, such review shall be
23 conducted in the manner provided in chapter twenty-nine-a of this
24 code. The petition for the review must be filed with the circuit
25 court within thirty days following entry of the final order issued
26 by the commissioner. An applicant or licensee obtaining the review

1 is required to pay the costs and fees incident to transcribing,
2 certifying and transmitting the records pertaining to the matter to
3 circuit court.

4 (d) The judgment of the circuit court reviewing the order of
5 the commissioner is final unless reversed, vacated or modified on
6 appeal to the Supreme Court of Appeals in accordance with the
7 provisions of section one, article six, chapter twenty-nine-a of
8 this code.

9 (e) Legal counsel and services for the commissioner in all the
10 proceedings in any circuit court and the Supreme Court of Appeals
11 shall be provided by the Attorney General or his or her assistants
12 and in any proceedings in any circuit court by the prosecuting
13 attorney of that county as well, all without additional
14 compensation.

15 (f) Upon final revocation, the commissioner shall proceed to
16 reissue the retail license by following the procedures set forth
17 herein for the initial issuance of a retail license.

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

19 **§60-7-13a. Hearing on sanctioning of license; notice; review of**
20 **action of commissioner; clerk of court to furnish**
21 **commissioner copy of order or judgment of**
22 **conviction of licensee; assessment of costs;**
23 **procedure for appealing any final order of the**
24 **commissioner which revokes, suspends, sanctions or**
25 **denies the issuance or renewal of any license**

1 **issued under this article.**

2 (a) The commissioner may not revoke or suspend a license
3 issued pursuant to this article or impose civil penalties
4 authorized under this article unless and until a hearing is held
5 after at least ten days' notice to the licensee of the time and
6 place of the hearing, which notice shall contain a statement or
7 specification of the charges, grounds or reasons for the proposed
8 contemplated action, and which is served upon the licensee as
9 notices under the West Virginia Rules of Civil Procedure or by
10 certified mail, return receipt requested, to the address for which
11 license was issued. At the time and place, designated in the
12 notice, the licensee has the right to appear and produce evidence
13 in his or her behalf, and to be represented by counsel: *Provided,*
14 That the commissioner may forthwith suspend the license when the
15 commissioner believes the public safety will be adversely affected
16 by the licensee's continued operation.

17 (b) The commissioner may summon witnesses in the hearing
18 before him or her, and fees of witnesses summoned on behalf of the
19 state in proceedings to sanction licenses shall be treated as a
20 part of the expenses of administration and enforcement. The fees
21 shall be the same as those in similar hearings in the circuit
22 courts of this state. The commissioner may, upon a finding of
23 violation, assess a licensee a sum, not to exceed \$150 per
24 violation, to reimburse the commissioner for expenditures of
25 witness fees, court reporter fees and travel costs incurred in
26 holding the hearing. Moneys so assessed shall be transferred to

1 the Alcohol Beverage Control Enforcement Fund created by section
2 thirteen of this article.

3 (c) If, at the request of the licensee or on his or her
4 motion, the hearing is continued and does not take place on the day
5 fixed by the commissioner in the notice of hearing, then the
6 licensee's license may be suspended until the hearing and decision
7 of the commissioner, and in the event of revocation or suspension
8 of the license, upon hearing before the commissioner, the licensee
9 is not permitted to sell alcoholic liquor or nonintoxicating beer
10 pending an appeal as provided by this article. Any person
11 continuing to sell alcoholic liquor or nonintoxicating beer after
12 his or her license has been suspended or revoked, as provided in
13 this section, is guilty of a misdemeanor and, shall be punished as
14 provided in section twelve of this article.

15 (d) Notwithstanding the provisions of subsection (b), section
16 four, article five, chapter twenty-nine-a of this code, the action
17 of the commissioner in revoking, suspending, sanctioning or
18 refusing a license is subject to review by the circuit court of
19 Kanawha County or the circuit court in the county where the
20 proposed or licensed premises is located and will or does conduct
21 sales: *Provided*, That in all other respects, such review shall be
22 conducted in the manner provided in chapter twenty-nine-a of this
23 code. The petition for review must be filed with the circuit court
24 within thirty days following entry of the final order of
25 revocation, suspension, sanction or refusal issued by the
26 commissioner. A licensee obtaining an order for the review is

1 required to pay the costs and fees incident to transcribing,
2 certifying and transmitting the records pertaining to the matter to
3 the circuit court. An application to the Supreme Court of Appeals
4 of West Virginia for a writ of error from any final order of the
5 circuit court in the matter shall be made within thirty days from
6 and after the entry of the final circuit court order.

7 (e) All such hearings, upon notice to show cause why license
8 should be revoked, suspended, sanctioned or refused, before the
9 commissioner shall be held in the offices of the commissioner in
10 Charleston, Kanawha County, unless otherwise provided by the
11 commissioner in the notice of hearing. When the hearing is held
12 elsewhere than in the commissioner's office, the licensee may be
13 required to make deposits of the estimated costs of the hearing.

14 (f) Whenever any licensee has been convicted of an offense
15 constituting a violation of the laws of this state or of the United
16 States relating to alcoholic liquor, or nonintoxicating beer, and
17 the conviction has become final, the clerk of the court in which
18 the licensee has been convicted shall forward to the commissioner
19 a certified copy of the order or judgment of conviction if the
20 clerk has knowledge that the person convicted is a licensee,
21 together with the certification of the clerk that the conviction is
22 final. The commissioner shall report violations of any of the
23 provisions of section twelve or twelve-a of this article to the
24 prosecuting attorney of the county in which the licensed premises
25 is located.

26 **ARTICLE 8. SALE OF WINES.**

1 §60-8-18. Revocation, suspension and other sanctions which may be
2 imposed by the commissioner upon the licensee;
3 procedure for appealing any final order of the
4 commissioner which revokes, suspends, sanctions or
5 denies the issuance or renewal of any license issued
6 under this article.

7 (a) The commissioner may on his or her own motion, or shall on
8 the sworn complaint of any person, conduct an investigation to
9 determine if any provisions of this article or any rule promulgated
10 or any order issued by the commissioner has been violated by any
11 licensee. After investigation, the commissioner may impose
12 penalties and sanctions as set forth below.

13 (1) If the commissioner finds that the licensee has violated
14 any provision of this article or any rule promulgated or order
15 issued by the commissioner, or if the commissioner finds the
16 existence of any ground on which a license could have been refused,
17 if the licensee were then applying for a license, the commissioner
18 may:

19 (A) Revoke the licensee's license;

20 (B) Suspend the licensee's license for a period determined by
21 the commissioner not to exceed twelve months; or

22 (C) Place the licensee on probation for a period not to exceed
23 twelve months; and

24 (D) Impose a monetary penalty not to exceed \$1,000 for each
25 violation where revocation is not imposed.

1 (2) If the commissioner finds that a licensee has willfully
2 violated any provision of this article or any rule promulgated or
3 any order issued by the commissioner, the commissioner shall revoke
4 the licensee's license.

5 (b) If a supplier or distributor fails or refuses to keep in
6 effect the bond required by section twenty-nine of this article,
7 the commissioner shall automatically suspend the supplier or
8 distributor's license until the bond required by section twenty of
9 this article is furnished to the commissioner, at which time the
10 commissioner shall vacate the suspension.

11 (c) Whenever the commissioner refuses to issue a license, or
12 suspends or revokes a license, places a licensee on probation or
13 imposes a monetary penalty, he or she shall enter an order to that
14 effect and cause a copy of the order to be served in person or by
15 certified mail, return receipt requested, on the licensee or
16 applicant.

17 (d) An applicant or licensee, as the case may be, adversely
18 affected by the order has a right to a hearing before the
19 commissioner if a written demand for hearing is served upon the
20 commissioner within ten days following the receipt of the
21 commissioner's order by the applicant or licensee. Timely service
22 of a demand for a hearing upon the commissioner operates to suspend
23 the execution of the order with respect to which a hearing has been
24 demanded, except an order suspending a license under the provisions
25 of subsection (b) of this section. The person demanding a hearing
26 shall give security for the cost of the hearing in a form and

1 amount as the commissioner may reasonably require. If the person
2 demanding the hearing does not substantially prevail in the hearing
3 or upon judicial review thereof as provided in subsections (g) and
4 (h) of this section, then the costs of the hearing shall be
5 assessed against him or her by the commissioner and may be
6 collected by an action at law or other proper remedy.

7 (e) Upon receipt of a timely served written demand for a
8 hearing, the commissioner shall immediately set a date for the
9 hearing and notify the person demanding the hearing of the date,
10 time and place of the hearing, which shall be held within thirty
11 days after receipt of the demand. At the hearing the commissioner
12 shall hear evidence and thereafter enter an order supporting by
13 findings of facts, affirming, modifying or vacating the order. Any
14 such order is final unless vacated or modified upon judicial review
15 thereof.

16 (f) The hearing and the administrative procedure prior to,
17 during and following the hearing shall be governed by and in
18 accordance with the provisions of article five, chapter twenty-
19 nine-a of this code.

20 (g) Notwithstanding the provisions of subsection (b), section
21 four, article five, chapter twenty-nine-a of this code, an
22 applicant or licensee adversely affected by a final order entered
23 following a hearing has the right of judicial review of the order
24 code in the circuit court of Kanawha County or the circuit court in
25 the county where the proposed or licensed premises is located and
26 will or does conduct sales: *Provided*, That in all other respects,

1 such review shall be conducted in the manner provided in chapter
2 twenty-nine-a of this code. The petition for the review must be
3 filed with the circuit court within thirty days following entry of
4 the final order issued by the commissioner. An applicant or
5 licensee obtaining judicial review is required to pay the costs and
6 fees incident to transcribing, certifying and transmitting the
7 records pertaining to the matter to circuit court.

8 (h) The judgment of the circuit court reviewing the order of
9 the commissioner is final unless reversed, vacated or modified on
10 appeal to the Supreme Court of Appeals in accordance with the
11 provisions of section one, article six, chapter twenty-nine-a of
12 this code.

13 (i) Legal counsel and services for the commissioner in all
14 proceedings in any circuit court and the Supreme Court of Appeals
15 shall be provided by the Attorney General or his or her assistants
16 and in any proceedings in any circuit court by the prosecuting
17 attorney of that county as well, all without additional
18 compensation.