

H. B. 3022

(By Delegates Craig, Skinner and Barrett)
[Introduced March 21, 2013; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-17, §60-3A-18 and §60-3A-25 of said code; to amend and reenact §60-7-12 of said code; and to amend and reenact §60-8-34 of said code, all relating to the sale of certain beer, wine and liquor; increasing the percentage of cost that a liquor retail licensee may charge; removing provisions relating to the sale of certain alcoholic products on certain days; and addressing days and hours of operation for certain licensees and private clubs.

Be it enacted by the Legislature of West Virginia:

That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3A-17, §60-3A-18 and §60-3A-25 of said code be amended and reenacted; that §60-7-12 of said code be amended and reenacted; and that §60-8-34 of said code be amended

1 and reenacted, all to read as follows:

2 **CHAPTER 11. TAXATION.**

3 **ARTICLE 16. NONINTOXICATING BEER.**

4 **§11-16-18. Unlawful acts of licensees; criminal penalties.**

5 (a) It ~~shall be~~ is unlawful:

6 (1) For any licensee, his, her, its or their servants, agents
7 or employees to sell, give or dispense, or any individual to drink
8 or consume, in or on any licensed premises or in any rooms directly
9 connected therewith, nonintoxicating beer or cooler on weekdays
10 between the hours of two o'clock a.m. and seven o'clock a.m., or
11 between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ nine
12 o'clock a.m., on any Sunday, except in private clubs licensed under
13 the provisions of article seven, chapter sixty of this code, where
14 the hours shall conform with the hours of sale of alcoholic
15 liquors;

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

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

1 (4) For any distributor to sell or offer to sell, or any
2 retailer to purchase or receive, any nonintoxicating beer as
3 defined in this article, except for cash and no right of action
4 ~~shall exist~~ exists to collect any claims for credit extended
5 contrary to the provisions of this subdivision. Nothing herein
6 contained ~~shall prohibit~~ prohibits a licensee from crediting to a
7 purchaser the actual price charged for packages or containers
8 returned by the original purchaser as a credit on any sale, or from
9 refunding to any purchaser the amount paid or deposited for the
10 containers when title is retained by the vendor: *Provided*, That a
11 distributor may accept an electronic transfer of funds if the
12 transfer of funds is initiated by an irrevocable payment order on
13 the invoiced amount for the nonintoxicating beer. The cost of the
14 electronic fund transfer shall be borne by the retailer and the
15 distributor must initiate the transfer no later than noon of one
16 business day after the delivery;

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

20 (6) For any brewer or distributor to give, furnish, rent or
21 sell any equipment, fixtures, signs or supplies directly or
22 indirectly or through a subsidiary or affiliate to any licensee
23 engaged in selling products of the brewing industry at retail or to
24 offer any prize, premium, gift or other similar inducement, except

1 advertising matter of nominal value, to either trade or consumer
2 buyers: *Provided*, That a distributor may offer, for sale or rent,
3 tanks of carbonic gas. Nothing herein contained ~~shall prohibit~~
4 prohibits a brewer from sponsoring any professional or amateur
5 athletic event or from providing prizes or awards for participants
6 and winners in any events: *Provided, however*, That no event ~~shall~~
7 may be sponsored which permits actual participation by athletes or
8 other persons who are minors, unless specifically authorized by the
9 commissioner;

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

12 (8) For any licensee except the holder of a license to operate
13 a private club issued under the provisions of article seven,
14 chapter sixty of this code or a holder of a license or a private
15 wine restaurant issued under the provisions of article eight of
16 said chapter to possess a federal license, tax receipt or other
17 permit entitling, authorizing or allowing the licensee to sell
18 liquor or alcoholic drinks other than nonintoxicating beer;

19 (9) For any licensee to obstruct the view of the interior of
20 his or her premises by enclosure, lattice, drapes or any means
21 which would prevent plain view of the patrons occupying the
22 premises. The interior of all licensed premises shall be
23 adequately lighted at all times: *Provided*, That provisions of this
24 subdivision do not apply to the premises of a Class B retailer, the

1 premises of a private club licensed under the provisions of article
2 seven, chapter sixty of this code or the premises of a private wine
3 restaurant licensed under the provisions of article eight of ~~said~~
4 that chapter;

5 (10) For any licensee to manufacture, import, sell, trade,
6 barter, possess or acquiesce in the sale, possession or consumption
7 of any alcoholic liquors on the premises covered by a license or on
8 premises directly or indirectly used in connection therewith:
9 *Provided*, That the prohibition contained in this subdivision with
10 respect to the selling or possessing or to the acquiescence in the
11 sale, possession or consumption of alcoholic liquors is not
12 applicable with respect to the holder of a license to operate a
13 private club issued under the provisions of article seven, chapter
14 sixty of this code nor ~~shall~~ is the prohibition ~~be~~ applicable to a
15 private wine restaurant licensed under the provisions of article
16 eight of said chapter insofar as the private wine restaurant is
17 authorized to serve wine;

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

22 (12) For any licensee to permit loud, boisterous or disorderly
23 conduct of any kind upon his or her premises or to permit the use
24 of loud musical instruments if either or any of the ~~same~~ conduct

1 may disturb the peace and quietude of the community wherein the
2 business is located: *Provided*, That no licensee may have in
3 connection with his or her place of business any loudspeaker
4 located on the outside of the licensed premises that broadcasts or
5 carries music of any kind;

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

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

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

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

19 (17) For any Class A licensee, his, her, its or their
20 servants, agents or employees, or for any licensee by or through
21 any servants, agents or employees, to allow, suffer or permit any
22 person less than eighteen years of age to loiter in or upon any
23 licensed premises; except, however, that the provisions of this
24 subdivision do not apply where a person under the age of eighteen

1 years is in or upon the premises in the immediate company of his or
2 her parent or parents, or where and while a person under the age of
3 eighteen years is in or upon the premises for the purpose of and
4 actually making a lawful purchase of any items or commodities
5 therein sold, or for the purchase of and actually receiving any
6 lawful service therein rendered, including the consumption of any
7 item of food, drink or soft drink therein lawfully prepared and
8 served or sold for consumption on the premises;

9 (18) For any distributor to sell, offer for sale, distribute
10 or deliver any nonintoxicating beer outside the territory assigned
11 to any distributor by the brewer or manufacturer of nonintoxicating
12 beer or to sell, offer for sale, distribute or deliver
13 nonintoxicating beer to any retailer whose principal place of
14 business or licensed premises is within the assigned territory of
15 another distributor of ~~such~~ nonintoxicating beer: *Provided*, That
16 nothing herein is considered to prohibit sales of convenience
17 between distributors licensed in this state wherein one distributor
18 sells, transfers or delivers to another distributor a particular
19 brand or brands for sale at wholesale; and

20 (19) For any licensee or any agent, servant or employee of any
21 licensee to knowingly violate any rule lawfully promulgated by the
22 commissioner in accordance with the provisions of chapter
23 twenty-nine-a of this code.

24 (b) Any person who violates any provision of this article

1 including, but not limited to, any provision of this section, or
2 any rule, or order lawfully promulgated by the commissioner, or who
3 makes any false statement concerning any material fact in
4 submitting application for license or for a renewal of a license or
5 in any hearing concerning the revocation thereof, or who commits
6 any of the acts herein declared to be unlawful is guilty of a
7 misdemeanor and, upon conviction thereof, shall be punished for
8 each offense by a fine of not less than twenty-five nor more than
9 \$500, or confined in ~~the county or regional~~ jail for not less than
10 thirty days nor more than six months, or ~~by both fine and~~
11 ~~confinement~~ fined and confined. Magistrates ~~shall~~ have concurrent
12 jurisdiction with the circuit court and any other courts having
13 criminal jurisdiction in their county for the trial of all
14 misdemeanors arising under this article.

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

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

18 (B) Can demonstrate that it requires each employee, servant or
19 agent to verify the age of any individual to whom nonintoxicating
20 beer is sold, furnished or given away by the use of the transaction
21 device may not be subject to: (i) Any criminal penalties
22 whatsoever, including those set forth in subsection (b) of this
23 section; (ii) any administrative penalties from the commissioner;
24 or (iii) any civil liability whatsoever for the improper sale,

1 furnishing or giving away of nonintoxicating beer to an individual
2 who is less than twenty-one years of age by one of his or her
3 employees, servants or agents. Any agent, servant or employee who
4 has improperly sold, furnished or given away nonintoxicating beer
5 to an individual less than twenty-one years of age is subject to
6 the criminal penalties of subsection (b) of this section. Any
7 agent, servant or employee who has improperly sold, furnished or
8 given away nonintoxicating beer to an individual less than
9 twenty-one years of age is subject to termination from employment,
10 and the employer ~~shall have~~ has no civil liability for the
11 termination.

12 (2) For purposes of this section, a Class B licensee can
13 demonstrate that it requires each employee, servant or agent to
14 verify the age of any individual to whom nonintoxicating beer is
15 sold by providing evidence: (A) That it has developed a written
16 policy which requires each employee, servant or agent to verify the
17 age of each individual to whom nonintoxicating beer will be sold,
18 furnished or given away; (B) that it has communicated this policy
19 to each employee, servant or agent; and (C) that it monitors the
20 actions of its employees, servants or agents regarding the sale,
21 furnishing or giving away of nonintoxicating beer and that it has
22 taken corrective action for any discovered noncompliance with this
23 policy.

24 (3) "Transaction scan" means the process by which a person

1 checks, by means of a transaction scan device, the age and identity
2 of the cardholder, and "transaction scan device" means any
3 commercial device or combination of devices used at a point of sale
4 that is capable of deciphering in an electronically readable format
5 the information enclosed on the magnetic strip or bar code of a
6 driver's license or other governmental identity card.

7 (d) Nothing in this article nor any rule or regulation of the
8 commissioner ~~shall~~ prevents or ~~be considered to prohibit~~
9 prohibits any licensee from employing any person who is at least
10 eighteen years of age to serve in the licensee's lawful employ,
11 including the sale or delivery of nonintoxicating beer as defined
12 in this article. With the prior approval of the commissioner, a
13 licensee whose principal business is the sale of food or consumer
14 goods or the providing of recreational activities, including, but
15 not limited to, nationally franchised fast food outlets,
16 family-oriented restaurants, bowling alleys, drug stores, discount
17 stores, grocery stores and convenience stores, may employ persons
18 who are less than eighteen years of age but at least sixteen years
19 of age: *Provided*, That the person's duties may not include the
20 sale or delivery of nonintoxicating beer or alcoholic liquors:
21 *Provided, however*, That the authorization to employ persons under
22 the age of eighteen years shall be clearly indicated on the
23 licensee's license.

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

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

2 **§60-3A-17. Wholesale prices set by commissioner; retail licensees**
3 **to purchase liquor from state; transportation and**
4 **storage; method of payment.**

5 (a) The commissioner shall fix wholesale prices for the sale
6 of liquor, other than wine, to retail licensees. The commissioner
7 shall sell liquor, other than wine, to retail licensees according
8 to a uniform pricing schedule. The commissioner shall obtain if
9 possible, upon request, any liquor requested by a retail licensee.

10 (b) Wholesale prices shall be established in order to yield a
11 net profit for the General Fund of not less than \$6,500,000
12 annually on an annual volume of business equal to the average for
13 the past three years. The net revenue derived from the sale of
14 alcoholic liquors shall be deposited into the General Revenue Fund
15 in the manner provided in section seventeen, article three of this
16 chapter.

17 (c) The commissioner shall specify the maximum wholesale
18 markup percentage which may be applied to the prices paid by the
19 commissioner for all liquor, other than wine, in order to determine
20 the prices at which all liquor, other than wine, will be sold to
21 retail licensees. A retail licensee shall purchase all liquor,
22 other than wine, for resale in this state only from the
23 commissioner, and the provisions of sections twelve and thirteen,
24 article six of this chapter shall not apply to the transportation

1 of the liquor: *Provided*, That a retail licensee shall purchase
2 wine from a wine distributor who is duly licensed under article
3 eight of this chapter. All liquor, other than wine, purchased by
4 retail licensees shall be stored in the state at the retail outlet
5 or outlets operated by the retail licensee: *Provided, however*,
6 That the commissioner, in his or her discretion, may upon written
7 request permit a retail licensee to store liquor at a site other
8 than the retail outlet or outlets.

9 (d) The sale of liquor by the commissioner to retail licensees
10 shall be paid by electronic funds transfer which shall be initiated
11 by the commissioner on the business day following the retail
12 licensees order or by money order, certified check or cashier's
13 check which shall be received by the commissioner at least
14 twenty-four hours prior to the shipping of the alcoholic liquors:
15 *Provided*, That if a retail licensee posts with the commissioner an
16 irrevocable letter of credit or bond with surety acceptable to the
17 commissioner from a financial institution acceptable to the
18 commissioner guaranteeing payment of checks, then the commissioner
19 may accept the retail licensee's checks in an amount up to the
20 amount of the letter of credit.

21 (e) (1) A retail licensee may not sell liquor to persons
22 licensed under the provisions of article seven of this chapter at
23 less than ~~one hundred ten percent~~ one hundred twenty percent of the
24 retail licensee's cost as defined in section six, article eleven-a,

1 chapter forty-seven of this code.

2 (2) A retail licensee may not sell liquor to the general
3 public at less than ~~one hundred ten percent~~ one hundred twenty
4 percent of the retail licensee's cost as defined in section six,
5 article eleven-a, chapter forty-seven of this code.

6 **§60-3A-18. Days and hours retail licensees may sell liquor.**

7 Retail licensees may not sell liquor ~~on Sundays and on~~
8 Christmas day, or between the hours of twelve midnight and eight
9 o'clock a.m., except that wine and fortified wines may be sold ~~on~~
10 ~~those days and~~ at such times as authorized in section thirty-four,
11 article eight of this chapter.

12 **§60-3A-25. Certain acts of retail licensees prohibited; criminal**
13 **penalties.**

14 (a) It is unlawful for any retail licensee, or agent or
15 employee thereof, on such retail licensee's premises to:

16 (1) Sell or offer for sale any liquor other than from the
17 original package or container;

18 (2) Sell, give away, or permit the sale of, gift of, or the
19 procurement of, any liquor, for or to any person under twenty-one
20 years of age;

21 (3) Sell, give away, or permit the sale of, gift of, or the
22 procurement of, any liquor, for or to any person visibly
23 intoxicated;

24 (4) Sell or offer for sale any liquor ~~on any Sunday or other~~

1 than during the hours permitted for the sale of liquor by retail
2 licensees as provided under this article;

3 (5) Permit the consumption by any person of any liquor;

4 (6) With the intent to defraud, alter, change or misrepresent
5 the quality, quantity or brand name of any liquor;

6 (7) Permit any person under eighteen years of age to sell,
7 furnish or give liquor to any other person;

8 (8) Purchase or otherwise obtain liquor in any manner or from
9 any source other than that specifically authorized in this article;
10 or

11 (9) Permit any person to break the seal on any package or
12 bottle of liquor.

13 (b) Any person who violates any provision of this article,
14 except section twenty-four of this article, including, but not
15 limited to, any provision of this section, or any rule promulgated
16 by the board or the commissioner, or who makes any false statement
17 concerning any material fact, or who omits any material fact with
18 intent to deceive, in submitting an application for a retail
19 license or for a renewal of a retail license or in any hearing
20 concerning the suspension or revocation thereof, or who commits any
21 of the acts declared in this article to be unlawful, is guilty of
22 a misdemeanor and, shall, upon conviction thereof, for each offense
23 be fined not less than \$100 or more than \$5,000, or ~~imprisoned in~~
24 ~~the county~~ confined in jail for not less than thirty days nor more

1 than one year, or both fined and ~~imprisoned~~ confined. Magistrates
2 have concurrent jurisdiction with the circuit courts for offenses
3 under this article.

4 (c) Nothing in this article, or any rule of the board or
5 commissioner, prevents or prohibits any retail licensee from
6 employing any person who is at least eighteen years of age to serve
7 in any retail licensee's lawful employment at any retail outlet
8 operated by such retail licensee, or from having ~~such~~ that person
9 sell or deliver liquor under the provisions of this article. With
10 the prior approval of the commissioner, a retail licensee may
11 employ persons at any retail outlet operated by such retail
12 licensee who are less than eighteen years of age but at least
13 sixteen years of age, but ~~such~~ those persons' duties ~~shall~~ may not
14 include the sale or delivery of liquor: *Provided*, That the
15 authorization to employ ~~such~~ persons under the age of eighteen
16 years shall be clearly indicated on the retail license issued to
17 any such retail licensee.

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

19 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

20 (a) It is unlawful for any licensee, or agent, employee or
21 member thereof, on such licensee's premises to:

22 (1) Sell or offer for sale any alcoholic liquors other than
23 from the original package or container;

24 (2) Authorize or permit any disturbance of the peace; obscene,

1 lewd, immoral or improper entertainment, conduct or practice,
2 gambling or any slot machine, multiple coin console machine,
3 multiple coin console slot machine or device in the nature of a
4 slot machine;

5 (3) Sell, give away or permit the sale of, gift to or the
6 procurement of any nonintoxicating beer, wine or alcoholic liquors
7 for or to, or permit the consumption of nonintoxicating beer, wine
8 or alcoholic liquors on the licensee's premises, by any person less
9 than twenty-one years of age;

10 (4) Sell, give away or permit the sale of, gift to or the
11 procurement of any nonintoxicating beer, wine or alcoholic liquors,
12 for or to any person known to be deemed legally incompetent, or for
13 or to any person who is physically incapacitated due to consumption
14 of nonintoxicating beer, wine or alcoholic liquor or the use of
15 drugs;

16 (5) Sell, give or dispense nonintoxicating beer, wine or
17 alcoholic liquors in or on any licensed premises or in any rooms
18 directly connected therewith, between the hours of three o'clock
19 a.m. and ~~one o'clock p.m.~~ nine o'clock a.m. on any Sunday;

20 (6) Permit the consumption by, or serve to, on the licensed
21 premises any nonintoxicating beer, wine or alcoholic liquors,
22 covered by this article, to any person who is less than twenty-one
23 years of age;

24 (7) With the intent to defraud, alter, change or misrepresent

1 the quality, quantity or brand name of any alcoholic liquor;

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

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

9 (10) (A) Employ any person who is less than eighteen years of
10 age in a position where the primary responsibility for ~~such~~
11 employment is to sell, furnish or give nonintoxicating beer, wine
12 or alcoholic liquors to any person;

13 (B) Employ any person who is between the ages of eighteen and
14 twenty-one who is not directly supervised by a person aged
15 twenty-one or over in a position where the primary responsibility
16 for such employment is to sell, furnish or give nonintoxicating
17 beer, wine or alcoholic liquors to any person; or

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

19 (b) It is unlawful for any licensee to advertise in any news
20 media or other means, outside of the licensee's premises, the fact
21 that alcoholic liquors may be purchased ~~thereat~~ on the premises.

22 (c) Any person who violates any of the foregoing provisions is
23 guilty of a misdemeanor and, upon conviction thereof, shall be
24 fined not less than \$500 nor more than \$1,000, or ~~imprisoned in the~~

1 ~~county~~ confined in jail for a period not to exceed one year, or
2 both fined and ~~imprisoned~~ confined.

3 **ARTICLE 8. SALE OF WINES.**

4 **§60-8-34. When retail sales prohibited.**

5 It ~~shall be~~ is unlawful for a retailer, farm winery, wine
6 specialty shop retailer, private wine bed and breakfast, private
7 wine restaurant or private wine spa licensee, his or her servants,
8 agents or employees to sell or deliver wine between the hours of
9 two o'clock a.m. and ~~one o'clock p.m.~~ nine o'clock a.m. on Sundays,
10 or between the hours of two o'clock a.m. and seven o'clock a.m. on
11 weekdays and Saturdays.

NOTE: The purpose of this bill is to remove prohibition era liquor laws addressing the sale of alcohol on Sundays, to adjust the minimum wholesale percentage for sales of liquor by retail outlets to private clubs, and permit private clubs to sell alcoholic liquors during brunch hours on Sunday starting at 9 a.m.

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