

Senate Bill No. 498

(By Senator Palumbo)

[Introduced March 12, 2013; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

11 A BILL to amend and reenact §11-16-24 of the Code of West Virginia,
12 1931, as amended; to amend and reenact §60-3A-28 of said code;
13 to amend and reenact §60-7-13a of said code; and to amend and
14 reenact §60-8-18 of said code, all relating to providing
15 consistency for the location of the Alcohol Beverage Control
16 Administration's appeal hearings; and providing that appeals
17 from the commissioner's decision are to be brought in the
18 circuit court of Kanawha County.

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

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

1 **CHAPTER 11. TAXATION.**

2 **ARTICLE 16. NONINTOXICATING BEER.**

3 **§11-16-24. Hearing on sanctioning of license; notice; review of**
 4 **action of commissioner; clerk of court to furnish**
 5 **commissioner copy of order or judgment of**
 6 **conviction of licensee; assessment of costs.**

7 The commissioner ~~shall~~ may not revoke ~~nor~~ or suspend ~~any a~~
 8 license issued pursuant to this article or impose ~~any civil~~
 9 ~~penalties~~ a civil penalty authorized ~~thereby~~ under this article
 10 unless and until a hearing ~~shall be~~ is held after at least ten
 11 days' notice to the licensee of the time and place of ~~such~~ the
 12 hearing, which notice shall contain a statement or specification of
 13 the charges, grounds or reasons for ~~such~~ the proposed contemplated
 14 action, and which ~~shall be~~ is served upon the licensee as notices
 15 under the West Virginia Rules of Civil Procedure or by certified
 16 mail, return receipt requested, to the address for which license
 17 was issued; at which time and place, so designated in the notice,
 18 the licensee ~~shall have~~ has the right to appear and produce
 19 evidence in his or her behalf, and to be represented by counsel.

20 The commissioner ~~shall have authority to~~ may summon witnesses
 21 in the hearings before him or her, and fees of witnesses summoned
 22 on behalf of the state in proceedings to sanction licenses shall be
 23 treated as a part of the expenses of administration and

1 enforcement. ~~Such~~ The fees shall be the same as those in similar
2 hearings in the circuit courts of this state. The commissioner
3 may, upon a finding of violation, assess a licensee a sum not to
4 exceed \$150 per violation to reimburse the commissioner for
5 expenditures for witness fees, court reporter fees and travel costs
6 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
7 transferred to the Nonintoxicating Beer Fund created by section
8 twenty-three of this article.

9 If, at the request of the licensee or on his or her motion,
10 the hearing ~~shall be~~ is continued and ~~shall~~ does not take place on
11 the day fixed by the commissioner in the notice ~~above provided for~~
12 of hearing, then ~~such~~ the licensee's license may be suspended until
13 the hearing and decision of the commissioner, and in the event of
14 revocation or suspension of ~~such~~ the license, upon hearing before
15 the commissioner, the licensee ~~shall not be~~ is not permitted to
16 sell beer pending an appeal as provided by this article. Any
17 person continuing to sell beer after his or her license has been
18 suspended or revoked, as hereinbefore provided, is guilty of a
19 misdemeanor and, shall be punished as provided in section nineteen
20 of this article.

21 The action of the commissioner in revoking, ~~or~~ suspending,
22 sanctioning or refusing a license ~~shall be~~ is subject to review
23 only by the circuit court of Kanawha County, ~~West Virginia,~~
24 notwithstanding the provisions of subsection (b), section four,

1 article five, chapter twenty-nine-a of this code, and in all other
2 respects in the manner provided in chapter twenty-nine-a of this
3 code, when ~~such~~ the applicant or licensee ~~may be~~ is aggrieved by
4 ~~such~~ the revocation, ~~or~~ suspension, sanction or renewal. Petition
5 for ~~such~~ review must be filed with ~~said~~ the circuit court of
6 Kanawha County, within ~~a period of~~ thirty days from and after the
7 date of the final order of revocation, ~~or~~ suspension, sanction or
8 refusal issued by the commissioner. ~~and any~~ An applicant or
9 licensee obtaining an order for ~~such~~ review ~~shall be~~ is required to
10 pay the costs and fees incident to transcribing, certifying and
11 transmitting the records pertaining to ~~such~~ the matter to the
12 circuit court. An application to the Supreme Court of Appeals of
13 West Virginia for a writ of error from any final order of the
14 circuit court in ~~any such~~ the matter shall be made within thirty
15 days from and after the entry of ~~such~~ the final circuit court
16 order.

17 All ~~such~~ hearings, upon notice to show cause why license
18 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
19 commissioner shall be held in the offices of the commissioner in
20 Charleston, Kanawha County, ~~West Virginia~~, unless otherwise
21 provided by the commissioner in ~~such~~ the notice ~~or agreed upon~~
22 ~~between the licensee and the commissioner; and~~ of hearing. When
23 ~~such~~ the hearing is held elsewhere than in the commissioner's
24 office, the licensee may be required to make deposits of the

1 estimated costs of ~~such~~ the hearing.

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

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

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

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

20 **§60-3A-28. Notice of and hearing on revocation.**

21 (a) Before a retail license issued under the authority of this
 22 article ~~may be~~ is suspended for a period of more than twenty days,
 23 or revoked, the commissioner shall give at least ten days' notice
 24 to the retail licensee. Notice shall be in writing, shall state

1 the reason for suspension or revocation, and shall designate a time
2 and place for a hearing where the retail licensee may show cause
3 why the retail license should not be suspended or revoked. Notice
4 shall be sent by certified mail to the address for which the retail
5 license was issued. The retail licensee may, at the time
6 designated for the hearing, produce evidence in his or her behalf
7 and be represented by counsel.

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

13 (c) Any person adversely affected by ~~an~~ a final order entered
14 following ~~such the~~ hearing ~~shall have~~ has the right of judicial
15 review ~~thereof in accordance with the provisions of section four,~~
16 ~~article five, chapter twenty-nine-a of this code with like effect~~
17 ~~as if the provisions of said section four were fully set forth in~~
18 ~~this section.~~ by only the circuit court of Kanawha County,
19 notwithstanding the provisions of subsection (b), section four,
20 article five, chapter twenty-nine-a of this code, and in all other
21 respects in the manner provided in chapter twenty-nine-a of this
22 code. Petition for the review must be filed with the circuit court
23 of Kanawha County, within thirty days from and after the date of
24 the final order issued by the commissioner. An applicant or

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

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

9 (e) Legal counsel and services for the commissioner in all
 10 ~~such the~~ proceedings in any circuit court and the Supreme Court of
 11 Appeals shall be provided by the Attorney General or his or her
 12 assistants and in any proceedings in any circuit court by the
 13 prosecuting 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 The commissioner ~~shall~~ may not revoke or suspend ~~any a~~ a license

1 issued pursuant to this article or impose ~~any~~ civil penalties
2 authorized ~~thereby~~ under this article unless and until a hearing
3 ~~shall be~~ is held after at least ten days' notice to the licensee of
4 the time and place of ~~such~~ the hearing, which notice shall contain
5 a statement or specification of the charges, grounds or reasons for
6 ~~such~~ the proposed contemplated action, and which ~~shall be~~ is served
7 upon the licensee as notices under the West Virginia Rules of Civil
8 Procedure or by certified mail, return receipt requested, to the
9 address for which license was issued. At ~~which~~ the time and place,
10 ~~so~~ designated in the notice, the licensee ~~shall have~~ has the right
11 to appear and produce evidence in his or her behalf, and to be
12 represented by counsel: *Provided*, That the commissioner may
13 forthwith suspend ~~any such~~ the license when the commissioner
14 believes the public safety will be adversely affected by the
15 licensee's continued operation.

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

1 incurred in holding the hearing. ~~Any~~ Moneys so assessed shall be
2 transferred to the Alcohol Beverage Control Enforcement Fund
3 created by section thirteen of this article.

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

17 The action of the commissioner in revoking, ~~or~~ suspending,
18 sanctioning or refusing a license ~~shall be~~ is subject to review
19 only by the circuit court of Kanawha County ~~West Virginia~~,
20 notwithstanding the provisions of subsection (b), section four,
21 article five, chapter twenty-nine-a of this code, and in all other
22 respects in the manner provided in chapter twenty-nine-a of this
23 code, when ~~such the~~ licensee ~~may be~~ is aggrieved by ~~such the~~
24 revocation, ~~or~~ suspension, sanction or refusal. Petition for ~~such~~

1 the review must be filed with ~~said~~ the circuit court of Kanawha
2 County within ~~a period of~~ thirty days from and after the date of
3 the final order of revocation, ~~or~~ suspension, sanction or refusal
4 issued by the commissioner. ~~and any~~ A licensee obtaining an order
5 for ~~such~~ the review ~~shall be~~ is required to pay the costs and fees
6 incident to transcribing, certifying and transmitting the records
7 pertaining to ~~such~~ the matter to the circuit court. An application
8 to the Supreme Court of Appeals of West Virginia for a writ of
9 error from any final order of the circuit court in ~~any such~~ the
10 matter shall be made within thirty days from and after the entry of
11 ~~such~~ the final circuit court order.

12 All such hearings, upon notice to show cause why license
13 should be revoked, ~~or~~ suspended, sanctioned or refused, before the
14 commissioner shall be held in the offices of the commissioner in
15 Charleston, Kanawha County, ~~West Virginia~~, unless otherwise
16 provided by the commissioner in ~~such~~ the notice ~~or agreed upon~~
17 ~~between the licensee and the commissioner and~~ of hearing. When ~~such~~
18 the hearing is held elsewhere than in the commissioner's office,
19 the licensee may be required to make deposits of the estimated
20 costs of ~~such~~ the hearing.

21 Whenever any licensee has been convicted of ~~any~~ an offense
22 constituting a violation of the laws of this state or of the United
23 States relating to alcoholic liquor, or nonintoxicating beer, and
24 ~~such~~ the conviction has become final, the clerk of the court in

1 which ~~such~~ the licensee has been convicted shall forward to the
2 commissioner a certified copy of the order or judgment of
3 conviction if ~~such~~ the clerk has knowledge that the person ~~so~~
4 convicted is a licensee, together with the certification of ~~such~~
5 the clerk that the conviction is final. The commissioner shall
6 report violations of any of the provisions of section twelve or
7 twelve-a of this article to the prosecuting attorney of the county
8 in which the licensed premises is located.

9 **ARTICLE 8. SALE OF WINES.**

10 **§60-8-18. Revocation, suspension and other sanctions which may be**
11 **imposed by the commissioner upon the licensee;**
12 **procedure upon refusal, revocation, suspension or**
13 **other sanction.**

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

20 (1) If the commissioner finds that the licensee has violated
21 any provision of this article or any rule promulgated or order
22 issued by the commissioner, or if the commissioner finds the
23 existence of any ground on which a license could have been refused,

1 if the licensee were then applying for a license, the commissioner
2 may:

3 (A) Revoke the licensee's license;

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

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

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

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

14 (b) If a supplier or distributor fails or refuses to keep in
15 effect the bond required by section twenty-nine of this article,
16 the commissioner shall automatically suspend the supplier or
17 distributor's license until the bond required by section twenty of
18 this article is furnished to the commissioner, at which time the
19 commissioner shall vacate the suspension.

20 (c) Whenever the commissioner refuses to issue a license, or
21 suspends or revokes a license, places a licensee on probation or
22 imposes a monetary penalty, he or she shall enter an order to that
23 effect and cause a copy of the order to be served in person or by
24 certified mail, return receipt requested, on the licensee or

1 applicant.

2 (d) ~~Any~~ An applicant or licensee, as the case may be,
3 adversely affected by the order has a right to a hearing before the
4 commissioner if a written demand for hearing is served upon the
5 commissioner within ten days following the receipt of the
6 commissioner's order by the applicant or licensee. Timely service
7 of a demand for a hearing upon the commissioner operates to suspend
8 the execution of the order with respect to which a hearing has been
9 demanded, except an order suspending a license under the provisions
10 of subsection (b) of this section. The person demanding a hearing
11 shall give security for the cost of the hearing in a form and
12 amount as the commissioner may reasonably require. If the person
13 demanding the hearing does not substantially prevail in ~~such~~ the
14 hearing or upon judicial review thereof as provided in subsections
15 (g) and (h) of this section, then the costs of the hearing shall be
16 assessed against him or her by the commissioner and may be
17 collected by an action at law or other proper remedy.

18 (e) Upon receipt of a timely served written demand for a
19 hearing, the commissioner shall immediately set a date for the
20 hearing and notify the person demanding the hearing of the date,
21 time and place of the hearing, which shall be held within thirty
22 days after receipt of the demand. At the hearing the commissioner
23 shall hear evidence and thereafter enter an order supporting by
24 findings of facts, affirming, modifying or vacating the order. Any

1 such order is final unless vacated or modified upon judicial review
2 thereof.

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

7 (g) ~~Any~~ An applicant or licensee adversely affected by ~~an~~ a
8 final order entered following a hearing has the right of judicial
9 review of the order ~~in accordance with the provisions of section~~
10 ~~four, article five, chapter twenty-nine-a of this code in the~~
11 ~~circuit court of Kanawha County, West Virginia.~~ by only the circuit
12 court of Kanawha County, notwithstanding the provisions of
13 subsection (b), section four, article five chapter twenty-nine-a of
14 this code, and in all other respects in the manner provided in
15 chapter twenty-nine-a of this code. Petition for the review must be
16 filed with the circuit court of Kanawha County, within thirty days
17 from and after the date of the final order issued by the
18 commissioner. An applicant or licensee obtaining judicial review
19 is required to pay the costs and fees incident to transcribing,
20 certifying and transmitting the records pertaining to the matter to
21 circuit court.

22 (h) The judgment of the ~~Kanawha County~~ circuit court reviewing
23 the order of the commissioner is final unless reversed, vacated or
24 modified on appeal to the Supreme Court of Appeals in accordance

1 with the provisions of section one, article six, chapter twenty-
2 nine-a of this code.

3 (i) Legal counsel and services for the commissioner in all
4 proceedings in any circuit court and the Supreme Court of Appeals
5 shall be provided by the Attorney General or his or her assistants
6 and in any proceedings in any circuit court by the prosecuting
7 attorney of that county as well, all without additional
8 compensation.

NOTE: The purpose of this bill is to make consistent the Alcohol Beverage Control Administration's hearing and appeal requirements among the various statutes for beer, liquor and wine. The bill provides the right to appeal final orders of the commissioner to the Kanawha County circuit court.

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