

Senate Bill No. 629

(By Senators Chafin and Plymale)

[Introduced February 17, 2014; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §11-16-18 and §11-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-24 of said code; to amend and reenact §60-6-8 of said code; to amend and reenact §60-7-12a of said code; and to amend and reenact §60-8-20a of said code, all relating to creating the misdemeanor offense for a person who commits an assault upon an employee of the Alcohol Beverage Control Commissioner while engaged in the performance of his or her duties.

Be it enacted by the Legislature of West Virginia:

That §11-16-18 and §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3A-24 of said code be amended and reenacted; that §60-6-8 of said code be amended and reenacted; that §60-7-12a of said code be amended and reenacted; and that §60-8-20a of said code be amended and

1 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., on any
12 Sunday, except in private clubs licensed under the provisions of
13 article seven, chapter sixty of this code, where the hours shall
14 conform with the hours of sale of alcoholic liquors;

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

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

24 (4) For any distributor to sell or offer to sell, or any

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

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

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

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

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

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

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

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

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

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

21 (12) For any licensee to permit loud, boisterous or disorderly
22 conduct of any kind upon his or her premises or to permit the use
23 of loud musical instruments if either or any of the same may
24 disturb the peace and quietude of the community wherein the

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

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

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

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

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

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

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

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

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

23 (b) Any person who violates any provision of this article
24 including, but not limited to, any provision of this section, or

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

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

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

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

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

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

22 (3) "Transaction scan" means the process by which a person
23 checks, by means of a transaction scan device, the age and identity
24 of the cardholder, and "transaction scan device" means any

1 commercial device or combination of devices used at a point of sale
2 that is capable of deciphering in an electronically readable format
3 the information enclosed on the magnetic strip or bar code of a
4 driver's license or other governmental identity card.

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

21 (e) A person, who commits an assault upon an employee of the
22 commissioner who is engaged in the performance of his or her
23 duties, is guilty of a misdemeanor and upon conviction thereof
24 shall be fined not less than \$250 nor more than \$1,000 or confined

1 in jail not less than thirty days nor more than six months, or both
2 fined and confined.

3 **§11-16-19. Unlawful acts of persons; criminal penalties.**

4 (a) (1) Any person under the age of twenty-one years, who
5 purchases, consumes, sells, possesses or serves nonintoxicating
6 beer is guilty of a misdemeanor and, upon conviction thereof, shall
7 be fined an amount not to exceed \$500 or shall be confined in jail,
8 or, in the case of a juvenile, a detention facility, for a period
9 not to exceed seventy-two hours, or both fined and confined or, in
10 lieu of such fine and confinement, may, for the first offense, be
11 placed on probation for a period not to exceed one year. Any
12 person convicted under this section may be sentenced pursuant to
13 the provisions of section one-a, article eleven-a, chapter
14 sixty-two of this code.

15 (2) Nothing in this article, nor any rule or regulation of the
16 commissioner, shall prevent or be deemed to prohibit any person who
17 is at least eighteen years of age from serving in the lawful
18 employment of any licensee, which may include the sale or delivery
19 of nonintoxicating beer as defined in this article. Further,
20 nothing in this article, nor any rule or regulation of the
21 commissioner, shall prevent or be deemed to prohibit any person who
22 is less than eighteen but at least sixteen years of age from being
23 employed by a licensee whose principal business is the sale of food
24 or consumer goods or the providing of recreational activities,

1 including, but not limited to, nationally franchised fast-food
2 outlets, family-oriented restaurants, bowling alleys, drug stores,
3 discount stores, grocery stores and convenience stores: *Provided,*
4 That such person shall not sell or deliver nonintoxicating beer.

5 (3) Nothing in this subsection shall prohibit a person who is
6 at least eighteen years of age from purchasing or possessing
7 nonintoxicating beer when he or she is acting upon the request of
8 or under the direction and control of any member of a state,
9 federal or local law-enforcement agency or the West Virginia
10 Alcohol Beverage Administration while the agency is conducting an
11 investigation or other activity relating to the enforcement of the
12 alcohol beverage control statutes and the rules of the
13 commissioner.

14 (b) Any person under the age of twenty-one years who, for the
15 purpose of purchasing nonintoxicating beer, misrepresents his or
16 her age or who for such purpose presents or offers any written
17 evidence of age which is false, fraudulent or not actually his or
18 her own or who illegally attempts to purchase nonintoxicating beer
19 is guilty of a misdemeanor and, upon conviction thereof, shall be
20 fined an amount not to exceed \$100 or shall be confined in jail, or
21 in the case of a juvenile, a juvenile detention facility, for a
22 period not to exceed seventy-two hours, or both such fine and
23 confinement or, in lieu of such fine and confinement, may, for the
24 first offense, be placed on probation for a period not exceeding

1 one year.

2 (c) Any person who ~~shall~~ knowingly buys for, gives to or
3 furnishes nonintoxicating beer to anyone under the age of
4 twenty-one to whom they are not related by blood or marriage is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined an amount not to exceed \$100 or shall be confined in jail for
7 a period not to exceed ten days, or both ~~such~~ fined and confinement
8 confined.

9 (d) (1) Any person who at any one time transports into the
10 state for their personal use, and not for resale, more than six and
11 seventy-five hundredths gallons of nonintoxicating beer, upon which
12 the West Virginia barrel tax has not been imposed, ~~shall be~~ is
13 guilty of a misdemeanor and, upon conviction thereof, shall be
14 fined an amount not to exceed \$100 or confined for ten days in
15 jail, or both fined and ~~imprisoned~~ confined. The untaxed
16 nonintoxicating beer found in the person's possession shall be
17 confiscated.

18 (2) If the Congress of the United States repeals the mandate
19 established by the Surface Transportation Assistance Act of 1982
20 relating to national uniform drinking age of twenty-one as found in
21 section six of Public Law 98-363, or a court of competent
22 jurisdiction declares the provision to be unconstitutional or
23 otherwise invalid, it is the intent of the Legislature that the
24 provisions contained in this section and section eighteen of this

1 article which prohibit the sale, furnishing, giving, purchase or
 2 ownership of nonintoxicating beer to or by a person who is less
 3 than twenty-one years of age shall be null and void and the
 4 provisions therein shall thereafter remain in effect and apply to
 5 the sale, furnishing, giving, purchase or ownership of
 6 nonintoxicating beer to or by a person who is less than nineteen
 7 years of age.

8 (e) A person, who commits an assault upon an employee of the
 9 commissioner who is engaged in the performance of his or her
 10 duties, is guilty of a misdemeanor and upon conviction thereof
 11 shall be fined not less than \$250 nor more than \$1,000 or confined
 12 in jail not less than thirty days nor more than six months, or both
 13 fined and confined.

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

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

16 **§60-3A-24. Unlawful acts by persons.**

17 (a) (1) Any person who is under the age of twenty-one years
 18 who purchases, consumes, sells, serves or possesses alcoholic
 19 liquor is guilty of a misdemeanor and, upon conviction thereof,
 20 shall be fined an amount not to exceed \$500 or shall be confined in
 21 jail, or, in the case of a juvenile, a detention center, for a
 22 period not to exceed seventy-two hours, or both fined and
 23 ~~imprisoned~~ confined or, in lieu of such fine and ~~incarceration~~
 24 confinement, may, for the first offense, be placed on probation for

1 a period not to exceed one year.

2 (2) Nothing in this article, nor any rule or regulation of the
3 commissioner, ~~shall prevents or be deemed~~ is considered to prohibit
4 any person who is at least eighteen years of age from serving in
5 the lawful employment of a licensee which includes the sale and
6 serving of alcoholic liquor.

7 (3) Nothing in this subsection ~~shall~~ prohibits a person who is
8 at least eighteen years of age from purchasing or possessing
9 alcoholic liquor when he or she is acting upon the request of or
10 under the direction and control of any member of a state, federal
11 or local law-enforcement agency or the West Virginia Alcohol
12 Beverage Control Administration while the agency is conducting an
13 investigation or other activity relating to the enforcement of the
14 alcohol beverage control statutes and the rules ~~and regulations~~ of
15 the commissioner.

16 (b) Any person under the age of twenty-one years who, for the
17 purpose of purchasing liquor from a retail licensee, misrepresents
18 his or her age or who for such purpose presents or offers any
19 written evidence of age which is false, fraudulent or not actually
20 his or her own or who illegally attempts to purchase liquor from a
21 retail licensee is guilty of a misdemeanor and, upon conviction
22 thereof, shall be fined an amount not to exceed \$100 or confined in
23 jail, or, in the case of a juvenile, a detention facility, for a
24 period not to exceed seventy-two hours, or both fined and confined

1 or, in lieu of such fine and ~~imprisonment~~ confinement, may, for the
2 first offense, be placed on probation for a period not exceeding
3 one year. Any person convicted under this section may be sentenced
4 pursuant to the provisions of section one-a, article eleven-a,
5 chapter sixty-two of this code.

6 (c) Any person who knowingly buys for, gives to or furnishes
7 to anyone under the age of twenty-one to whom he or she is not
8 related by blood or marriage any liquor from whatever source is
9 guilty of a misdemeanor and, upon conviction thereof, shall be
10 fined an amount not to exceed \$250 or confined in jail for a period
11 not to exceed ten days, or both fined and confined.

12 (d) No person while on the premises of a retail outlet may
13 consume liquor or break the seal on any package or bottle of
14 liquor. Any person who violates the provisions of this subsection
15 is guilty of a misdemeanor and, upon conviction thereof, shall be
16 fined an amount not to exceed \$100 or confined in jail for a period
17 not to exceed ten days, or both fined and confined.

18 (e) A person, who commits an assault upon an employee of the
19 commissioner wh0 is engaged in the performance of his or her
20 duties, is guilty of a misdemeanor and upon conviction thereof
21 shall be fined not less than \$250 nor more than \$1,000 or confined
22 in jail not less than thirty days nor more than six months, or both
23 fined and confined.

24 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

1 **§60-6-8. Unlawful sale or possession by licensee.**

2 A licensed person ~~shall~~ may not:

3 (1) Sell alcoholic liquors of a kind other than that which
4 such license or this chapter authorizes him or her to sell;

5 (2) Sell beer to which wine, spirits, or alcohol has been
6 added;

7 (3) Sell wine to which other alcoholic spirits have been
8 added, otherwise than as required in the manufacture thereof under
9 regulations of the commission;

10 (4) Sell alcoholic liquors to a person specified in section
11 twenty-two, article three of this chapter;

12 (5) Sell alcoholic liquors except as authorized by his or her
13 license;

14 (6) Sell any alcoholic liquor when forbidden by the provisions
15 of this chapter;

16 (7) Keep on the premises covered by his or her license
17 alcoholic liquor other than that which he or she is authorized to
18 sell by such license or by this chapter.

19 A person who violates any provision of this section ~~shall be~~
20 is guilty of a misdemeanor and, upon conviction shall be fined not
21 less than \$50 nor more than \$500, or confined in jail not less than
22 thirty days nor more than one year, or both ~~such~~ fined and
23 ~~imprisonment~~ confined for the first offense. Upon conviction of a
24 second or subsequent offense, the court may ~~in its discretion~~

1 impose a penalty of ~~confinement in the penitentiary~~ imprisonment in
2 a state correctional facility for a period not to exceed three
3 years.

4 A person, who commits an assault upon an employee of the
5 commissioner who is engaged in the performance of his or her
6 duties, is guilty of a misdemeanor and upon conviction thereof
7 shall be fined not less than \$250 nor more than \$1,000 or confined
8 in jail not less than thirty days nor more than six months, or both
9 fined and confined.

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

11 **§60-7-12a. Unlawful acts by persons.**

12 (a) A person under the age of twenty-one years may not order,
13 pay for, share the cost of or attempt to purchase any
14 nonintoxicating beer, wine or alcoholic liquors from a licensee or
15 consume any nonintoxicating beer, wine or alcoholic liquors
16 purchased from a licensee or possess any nonintoxicating beer, wine
17 or alcoholic liquors purchased from a licensee. Any person under
18 the age of twenty-one years who violates any provisions of this
19 subsection is guilty of a misdemeanor, and, upon conviction
20 thereof, shall be fined in an amount not to exceed \$500 or
21 ~~imprisoned in the county~~ confined in jail for a period not to
22 exceed seventy-two hours, or both fined and ~~imprisoned~~ confined,
23 and, in addition to such fine and ~~imprisonment~~ confinement, may,
24 for the first offense, be placed on probation for a period not to

1 exceed one year: *Provided*, That nothing in this subsection ~~shall~~
2 prohibits a person who is at least eighteen years of age from
3 purchasing or possessing nonintoxicating beer, wine or alcoholic
4 liquors when he or she is acting upon the request of or under the
5 direction and control of any member of a state, federal or local
6 law-enforcement agency or the West Virginia alcohol beverage
7 administration while the agency is conducting an investigation or
8 other activity relating to the enforcement of the alcohol beverage
9 control statutes and the rules ~~and regulations~~ of the commissioner.

10 (b) Any person under the age of twenty-one years who, for the
11 purpose of purchasing nonintoxicating beer, wine, or alcoholic
12 liquors from a licensee, misrepresents his or her age, or who for
13 ~~such~~ that purpose presents or offers any written evidence of age
14 which is false, fraudulent or not actually his or her own, or who
15 illegally attempts to purchase nonintoxicating beer, wine, or
16 alcoholic liquors from a licensee, is guilty of a misdemeanor, and,
17 upon conviction thereof, shall be fined in an amount not to exceed
18 \$500 or shall be ~~imprisoned in the county~~ confined in jail for a
19 period not to exceed seventy-two hours, or both ~~such~~ fined and
20 ~~imprisonment~~ confined, or, in lieu of such fine and ~~imprisonment~~
21 confinement, may, for the first offense, be placed on probation for
22 a period not exceeding one year.

23 (c) Any person who knowingly buys for, gives to or furnishes
24 to anyone under the age of twenty-one, any nonintoxicating beer,

1 wine or alcoholic liquors purchased from a licensee, is guilty of
 2 a misdemeanor and, shall, upon conviction thereof, be fined not
 3 more than \$500, or ~~imprisoned in the county~~ confined in jail not
 4 more than ten days, or both fined and ~~imprisoned~~ confined.

5 (d) A person, who commits an assault upon an employee of the
 6 commissioner who is engaged in the performance of his or her
 7 duties, is guilty of a misdemeanor and upon conviction thereof
 8 shall be fined not less than \$250 nor more than \$1,000 or confined
 9 in jail not less than thirty days nor more than six months, or both
 10 fined and confined.

11 **ARTICLE 8. SALE OF WINES.**

12 **§60-8-20a. Unlawful acts by persons.**

13 (a) Any person under the age of twenty-one years who
 14 purchases, consumes, sells, possesses or serves wine or other
 15 alcoholic liquor is guilty of a misdemeanor, and, upon conviction
 16 thereof, shall be fined in an amount not to exceed \$500 or shall be
 17 ~~incarcerated in the county~~ confined in jail for a period not to
 18 exceed seventy-two hours, or both fined and ~~imprisoned~~ confined,
 19 or, in lieu of such fine and ~~incarceration~~ confinement, may, for
 20 the first offense, be placed on probation for a period not to
 21 exceed one year.

22 Nothing in this article, nor any rule ~~or regulation~~ of the
 23 commissioner, ~~shall~~ may prevent or be ~~deemed~~ considered to prohibit
 24 any person who is at least eighteen years of age from serving in

1 the lawful employment of any licensee, which may include the sale
2 or delivery of wine as defined in this article. Further, nothing
3 in this article, nor any rule ~~or regulation~~ of the commissioner,
4 ~~shall~~ may prevent or be ~~deemed~~ considered to prohibit any person
5 who is less than eighteen but at least sixteen years of age from
6 being employed by a licensee whose principal business is the sale
7 of food or consumer goods or the providing of recreational
8 activities, including, but not limited to, nationally franchised
9 fast food outlets, family-oriented restaurants, bowling alleys,
10 drug stores, discount stores, grocery stores and convenience
11 stores: *Provided*, That such person ~~shall~~ may not sell or deliver
12 wine or alcoholic liquor.

13 Nothing in this subsection ~~shall~~ prohibits a person who is at
14 least eighteen years of age from purchasing or possessing wine or
15 alcoholic liquor when he or she is acting upon the request of or
16 under the direction and control of any member of a state, federal
17 or local law-enforcement agency or the West Virginia alcohol
18 beverage administration while the agency is conducting an
19 investigation or other activity relating to the enforcement of the
20 alcohol beverage control statutes and the rules and regulations of
21 the commissioner.

22 (b) Any person under the age of twenty-one years who, for the
23 purpose of purchasing wine or other alcoholic liquors from a
24 licensee, misrepresents his or her age, or who for such purpose

1 presents or offers any written evidence of age which is false,
2 fraudulent or not actually his or her own, or who illegally
3 attempts to purchase wine or other alcoholic liquors, is guilty of
4 a misdemeanor, and, upon conviction thereof, shall be fined in an
5 amount not to exceed \$50 or shall be ~~imprisoned in the county~~
6 confined in jail for a period not to exceed seventy-two hours, or
7 both ~~such~~ fined and ~~imprisonment~~ confined, or, in lieu of such fine
8 and ~~imprisonment~~ confinement, may, for the first offense, be placed
9 on probation for a period not exceeding one year.

10 (c) Any person who shall knowingly buy for, give to or furnish
11 wine or other alcoholic liquors from any source to anyone under the
12 age of twenty-one to whom they are not related by blood or
13 marriage, is guilty of a misdemeanor and, shall, upon conviction
14 thereof, be fined in an amount not to exceed \$100 or shall be
15 ~~imprisoned in the county~~ confined in jail for a period not to
16 exceed ten days, or both ~~such~~ fined and ~~imprisonment~~ confinement.

17 (d) A person, who commits an assault upon an employee of the
18 commissioner who is engaged in the performance of his or her
19 duties, is guilty of a misdemeanor and upon conviction thereof
20 shall be fined not less than \$250 nor more than \$1,000 or confined
21 in jail not less than thirty days nor more than six months, or both
22 fined and confined.

NOTE: The purpose of this bill is to creating the misdemeanor offense for a person who commits an assault upon an employee of the Alcohol Beverage Control Commissioner while engaged in the performance of his or her duties.

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