

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 42**

4 (By Senators Beach and Williams)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 16, 2015.]
8 _____

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10
11 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to amend
12 and reenact §60-4-3a and §60-4-3b; to amend and reenact §60-7-11 and §60-7-12 of said
13 code; and to amend and reenact §60-8-34 of said code, all relating to allowing restaurants,
14 private clubs and wineries to sell alcohol at 10:00 a.m. on Sundays; sale of alcohol by
15 licensed manufacturers; authorizing licensed wineries, farm wineries, distilleries and
16 mini-distilleries to make retail sales of wine and alcoholic liquors manufactured by the
17 winery, farm-winery, distillery or mini-distillery for consumption off the premises on
18 Sundays beginning at 10:00 a.m.; authorizing licensed wineries, farm wineries, distilleries
19 and mini-distilleries to offer complimentary samples for consumption on the premises on
20 Sundays beginning at 10:00 a.m.; and authorizing distilleries and mini-distilleries which
21 manufacture less than fifty thousand gallons of alcoholic liquor per year to seek and hold a
22 separate license to operate a private club on the premises of the distillery or mini-distillery;

1 and allowing for the sale of products manufactured on the premises of the distillery or
2 mini-distillery, other than in sealed packages, for consumption on the premises of any such
3 private club.

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

5 That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
6 that §60-4-3a and §60-4-3b of said code be amended and reenacted; that §60-7-11 and §60-7-12 of
7 said code be amended and reenacted; and that §60-8-34 of said code be amended and reenacted, all
8 to read as follows:

9 **CHAPTER 11. TAXATION.**

10 **ARTICLE 16. NONINTOXICATING BEER.**

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

12 (a) It shall be unlawful:

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

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

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

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

14 (5) For any brewer or distributor or brew-pub or his, her, its or their agents to transport or
15 deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

16 (6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs
17 or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling
18 products of the brewing industry at retail or to offer any prize, premium, gift or other similar
19 inducement, except advertising matter of nominal value, to either trade or consumer buyers:
20 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing ~~herein~~
21 contained in this section ~~shall prohibit~~ prohibits a brewer from sponsoring any professional or
22 amateur athletic event or from providing prizes or awards for participants and winners in any events:

1 *Provided, however,* That no event shall be sponsored which permits actual participation by athletes
2 or other persons who are minors, unless specifically authorized by the commissioner;

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

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

10 (9) For any licensee to obstruct the view of the interior of his or her premises by enclosure,
11 lattice, drapes or any means which would prevent plain view of the patrons occupying the premises.
12 The interior of all licensed premises shall be adequately lighted at all times: *Provided,* That
13 provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a
14 private club licensed under the provisions of article seven, chapter sixty of this code or the premises
15 of a private wine restaurant licensed under the provisions of article eight of said chapter;

16 (10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the
17 sale, possession or consumption of any alcoholic liquors on the premises covered by a license or on
18 premises directly or indirectly used in connection ~~therewith~~ with it: *Provided,* That the prohibition
19 contained in this subdivision with respect to the selling or possessing or to the acquiescence in the
20 sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of
21 a license to operate a private club issued under the provisions of article seven, chapter sixty of this
22 code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions

1 of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

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

5 (12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his
6 or her premises or to permit the use of loud musical instruments if either or any of the same may
7 disturb the peace and ~~quietude~~ quiet of the community ~~wherein~~ where the business is located:
8 *Provided*, That no licensee may have in connection with his or her place of business any loudspeaker
9 located on the outside of the licensed premises that broadcasts or carries music of any kind;

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

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

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

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

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

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

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

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

17 (b) Any person who violates any provision of this article, including, but not limited to, any
18 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
19 makes any false statement concerning any material fact in submitting application for license or for
20 a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of
21 the acts ~~herein~~ declared in this section to be unlawful is guilty of a misdemeanor and, upon
22 conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than

1 \$500, or confined in the county or regional jail for not less than thirty days nor more than six months,
2 or by both fine and confinement. Magistrates shall have concurrent jurisdiction with the circuit court
3 and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors
4 arising under this article.

5 © (1) A Class B licensee that:

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

7 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of any
8 individual to whom nonintoxicating beer is sold, furnished or given away by the use of the
9 transaction device may not be subject to: (I) Any criminal penalties whatsoever, including those set
10 forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or
11 (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating
12 beer to an individual who is less than twenty-one years of age by one of his or her employees,
13 servants or agents. Any agent, servant or employee who has improperly sold, furnished or given
14 away nonintoxicating beer to an individual less than twenty-one years of age is subject to the
15 criminal penalties of subsection (b) of this section. Any agent, servant or employee who has
16 improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one
17 years of age is subject to termination from employment, and the employer shall have no civil liability
18 for the termination.

19 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each
20 employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold
21 by providing evidence: (A) That it has developed a written policy which requires each employee,
22 servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold,

1 furnished or given away; (B) that it has communicated this policy to each employee, servant or agent;
2 and (C) that it monitors the actions of its employees, servants or agents regarding the sale, furnishing
3 or giving away of nonintoxicating beer and that it has taken corrective action for any discovered
4 noncompliance with this policy.

5 (3) “Transaction scan” means the process by which a person checks, by means of a
6 transaction scan device, the age and identity of the cardholder, and “transaction scan device” means
7 any commercial device or combination of devices used at a point of sale that is capable of
8 deciphering in an electronically readable format the information enclosed on the magnetic strip or
9 bar code of a driver’s license or other governmental identity card.

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

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

22 **ARTICLE 4. LICENSES.**

1 **§60-4-3a. Distillery and mini-distillery license to manufacture and sell.**

2 (a) *Sales of liquor.* -- An operator of a distillery or a mini-distillery may offer liquor for retail
3 sale to customers from the distillery or the mini-distillery for consumption off premises only. Except
4 for free complimentary samples offered pursuant to section one, article six of this chapter or sales
5 for consumption offered under a valid private club license held by a mini-distillery pursuant to article
6 seven, chapter sixty of this code, customers are prohibited from consuming any liquor on the
7 premises of the distillery or the mini-distillery. Mini-distilleries that produce fifty thousand or more
8 gallons of alcoholic liquor per year may not hold a private club license.

9 (b) *Retail sales.* -- Every licensed distillery or mini-distillery shall comply with the provisions
10 of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three,
11 twenty-four, twenty-five and twenty-six, article three-a of this chapter and the provisions of articles
12 three and four of this chapter applicable to liquor retailers and distillers: Provided, That a licensed
13 distillery or mini-distillery may offer complimentary samples for consumption on premises and make
14 retail sales of alcoholic liquors manufactured by that licensed distillery or mini-distillery for
15 consumption off the premises on Sundays beginning at ten o'clock a.m.

16 © *Payment of taxes and fees.* -- The distillery or mini-distillery shall pay all taxes and fees
17 required of licensed retailers and meet applicable licensing provisions as required by this chapter and
18 by rule of the commissioner.

19 (d) *Payments to market zone retailers.* -- Each distillery or mini-distillery shall submit to the
20 commissioner ten percent of the gross sales price or each retail liquor sale for the value of all sales
21 at the distillery or the mini-distillery each month. This collection shall be distributed by the
22 commissioner, at least quarterly, to each market zone retailer located in the distillery or

1 mini-distillery's market zone, proportionate to each market zone retailer's annual gross prior years
2 pretax value sales.

3 (e) *Limitations on licensees.* -- No distillery or mini-distillery may sell more than three
4 thousand gallons of product at the distillery or mini-distillery location the initial two years of
5 licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery
6 location by two thousand gallons following the initial 24-month period of licensure and may increase
7 sales at the distillery or mini-distillery location each subsequent 24-month period by two thousand
8 gallons, not to exceed ten thousand gallons a year of total sales at the distillery or mini-distillery
9 location. No licensed mini-distillery may produce more than twenty thousand gallons per calendar
10 year at the mini-distillery location. No more than one distillery or mini-distillery license may be
11 issued to a single person or entity and no person may hold both a distillery and a mini-distillery
12 license.

13 **§60-4-3b. Winery and farm winery license to manufacture and sell.**

14 (a) *Sales of wine.* -- An operator of a winery or farm winery may offer wine produced by the
15 winery or farm winery for retail sale to customers from the winery or farm winery for consumption
16 off the premises only. Except for free complimentary samples offered pursuant to section one, article
17 six of this chapter, customers are prohibited from consuming any wine on the premises of the winery
18 or farm winery, unless such winery or farm winery has obtained a multicapacity winery or farm
19 winery license.

20 (b) *Retail sales.* -- Every licensed winery or farm winery shall comply with the provisions
21 of articles three, four and eight of this chapter as applicable to wine retailers, wineries and suppliers
22 when properly licensed in such capacities: Provided, That a licensed winery or farm winery may

1 offer complimentary samples for consumption on premises and make retail sales of wine
2 manufactured by that licensed winery or farm winery for consumption off the premises on Sundays
3 beginning at ten o'clock a.m.

4 © *Payment of taxes and fees.* -- The winery or farm winery shall pay all taxes and fees
5 required of licensed wine retailers and meet applicable licensing provisions as required by this
6 chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier shall
7 submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month,
8 as provided in article eight of this chapter.

9 (d) *Advertising.* -- A winery or farm winery may advertise a particular brand or brands of
10 wine produced by it, and the price of the wine subject to federal requirements or restrictions.

11 (e) *Limitations on licensees.* -- A winery or farm winery must maintain separate winery or
12 farm winery supplier, retailer and direct shipper licenses when acting in one or more of those
13 capacities, and must pay all associated license fees, unless such winery or farm winery holds a
14 license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article
15 eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity
16 winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of
17 its wine as specified in section two, article six of this chapter; private wine restaurant; and direct
18 shipper for wine produced by the winery or farm winery. All wineries must use a distributor to
19 distribute and sell their wine in the state, except for farm wineries. No more than one winery or farm
20 winery license may be issued to a single person or entity and no person may hold both a winery and
21 a farm winery license.

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

1 **§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail**
2 **licensee; exceptions.**

3 (a)(1) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia
4 Alcohol Beverage Control Commissioner at prices established by the commissioner for sales of the
5 alcoholic liquors to the public generally or from any retail licensee licensed under the provisions of
6 article three-a of this chapter, except that the licensees may purchase those wines permitted to be
7 sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said
8 article at the same prices the distributors sell the wines to retailers licensed pursuant to ~~said~~ that
9 article and distilleries or mini-distilleries licensed under article four, chapter sixty of this code may
10 sell alcoholic liquor manufactured on the premises of the distillery or mini-distillery, other than in
11 sealed packages, at a separately licensed private club established on the premises of the distillery or
12 mini-distillery.

13 (2) A licensee may by contract approved by the commissioner receive deliveries of alcoholic
14 liquor from a retail liquor store and the provisions of sections twelve and thirteen, article six of this
15 chapter shall not apply to the transportation of that alcoholic liquor.

16 (b) In all reports filed under section sixteen, article fifteen, chapter eleven of this code, retail
17 licensees licensed under the provisions of article three-a of this chapter shall separately identify the
18 amount of sales tax on sales of liquor to licensees in the manner required by the Tax Commissioner.

19 © Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this code
20 to the contrary, the amount of the sales taxes collected by the Tax Commissioner shall be deposited
21 in a revolving fund account in the State Treasurer's Office, designated the "Drunk Driving
22 Prevention Fund", and administered by the commission on drunk driving prevention, subject to

1 appropriations by the Legislature.

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

3 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

4 (a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensees
5 premises to:

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

8 (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper
9 entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine,
10 multiple coin console slot machine or device in the nature of a slot machine;

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

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

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

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

1 years of age;

2 (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand
3 name of any alcoholic liquor;

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

6 (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide,
7 cyclopropane, ethylene, helium or 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 age in a position where the
10 primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or
11 alcoholic liquors to any person;

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

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

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

19 © Any person who violates any of the foregoing provisions is guilty of a misdemeanor and,
20 upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or imprisoned in
21 the county jail for a period not to exceed one year, or both fined and imprisoned.

22 **ARTICLE 8. SALE OF WINES.**

1 **§60-8-34. When retail sales prohibited.**

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

(NOTE: The purpose of this bill is to allow restaurants, private clubs and wineries to sell alcoholic beverages at ten o'clock a.m. on Sundays.)

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