

Senate Bill No. 42

(By Senators Beach and Williams)

[Introduced January 14, 2015; referred to the Committee on the Judiciary.]

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9 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to amend
10 and reenact §60-7-12 of said code; and to amend and reenact §60-8-34 of said code, all
11 relating to allowing restaurants, private clubs and wineries to sell alcohol at 10:00 a.m. on
12 Sundays.

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

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

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

20 (a) It shall be unlawful:

21 (1) For any licensee, his, her, its or their servants, agents or employees to sell, give or

1 dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms
2 directly connected ~~therewith~~, nonintoxicating beer or cooler on weekdays between the hours of two
3 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.~~
4 ten o'clock a.m., on any Sunday, except in private clubs licensed under the provisions of article
5 seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic
6 liquors;

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

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

13 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
14 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to
15 collect any claims for credit extended contrary to the provisions of this subdivision. Nothing ~~herein~~
16 contained in this section shall prohibit prohibits a licensee from crediting to a purchaser the actual
17 price charged for packages or containers returned by the original purchaser as a credit on any sale,
18 or from refunding to any purchaser the amount paid or deposited for the containers when title is
19 retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the
20 transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the
21 nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the

1 distributor ~~must~~ shall initiate the transfer no later than noon of one business day after the delivery;

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

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

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

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

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

20 (9) For any licensee to obstruct the view of the interior of his or her premises by enclosure,
21 lattice, drapes or any means which would prevent plain view of the patrons occupying the premises.

1 The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That
2 provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a
3 private club licensed under the provisions of article seven, chapter sixty of this code or the premises
4 of a private wine restaurant licensed under the provisions of article eight of said chapter;

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

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

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

21 (13) For any person whose license has been revoked, as provided in this article, to obtain

1 employment with any retailer within the period of one year from the date of the revocation, or for
2 any retailer to knowingly employ that person within the specified time;

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

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

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

9 (17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any
10 licensee by or through any servants, agents or employees, to allow, suffer or permit any person less
11 than eighteen years of age to loiter in or upon any licensed premises; except, however, that the
12 provisions of this subdivision do not apply where a person under the age of eighteen years is in or
13 upon the premises in the immediate company of his or her parent or parents, or where and while a
14 person under the age of eighteen years is in or upon the premises for the purpose of and actually
15 making a lawful purchase of any items or commodities therein sold, or for the purchase of and
16 actually receiving any lawful service therein rendered, including the consumption of any item of
17 food, drink or soft drink therein lawfully prepared and served or sold for consumption on the
18 premises;

19 (18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer
20 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
21 beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal

1 place of business or licensed premises is within the assigned territory of another distributor of such
2 nonintoxicating beer: *Provided*, That nothing herein in this section is considered to prohibit sales of
3 convenience between distributors licensed in this state ~~wherein~~ where one distributor sells, transfers
4 or delivers to another distributor a particular brand or brands for sale at wholesale; and

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

8 (b) Any person who violates any provision of this article including, but not limited to, any
9 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
10 makes any false statement concerning any material fact in submitting application for license or for
11 a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of
12 the acts ~~herein~~ declared in this section to be unlawful is guilty of a misdemeanor and, upon
13 conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than
14 \$500, or confined in the county or regional jail for not less than thirty days nor more than six months,
15 or by both fine and confinement. Magistrates ~~shall~~ have concurrent jurisdiction with the circuit court
16 and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors
17 arising under this article.

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

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

20 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of any
21 individual to whom nonintoxicating beer is sold, furnished or given away by the use of the

1 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set
2 forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or
3 (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating
4 beer to an individual who is less than twenty-one years of age by one of his or her employees,
5 servants or agents. Any agent, servant or employee who has improperly sold, furnished or given
6 away nonintoxicating beer to an individual less than twenty-one years of age is subject to the
7 criminal penalties of subsection (b) of this section. Any agent, servant or employee who has
8 improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one
9 years of age is subject to termination from employment, and the employer shall have no civil liability
10 for the termination.

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

19 (3) “Transaction scan” means the process by which a person checks, by means of a
20 transaction scan device, the age and identity of the cardholder, and “transaction scan device” means
21 any commercial device or combination of devices used at a point of sale that is capable of

1 deciphering in an electronically readable format the information enclosed on the magnetic strip or
2 bar code of a driver's license or other governmental identity card.

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

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

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

16 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

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

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

21 (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper

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

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

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

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

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

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

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

20 (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide,
21 cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as

1 authorized by the commissioner;

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

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

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

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

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

15 **ARTICLE 8. SALE OF WINES.**

16 **§60-8-34. When retail sales prohibited.**

17 It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed
18 and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or
19 employees to sell or deliver wine between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ ten
20 o'clock a.m. on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on
21 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.