

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 298

BY SENATOR WALTERS

[Originating in the Committee on Economic
Development; and then to the Committee on the
Judiciary; reported on February 11, 2016.]

1 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-7-12
3 of said code; and to amend and reenact §60-8-34 of said code, all relating to allowing
4 restaurants, private clubs, distilleries, mini-distilleries and wineries to sell and serve
5 alcohol beginning at 10:00 a.m. on Sundays.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

1 (a) It shall be unlawful:

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

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

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

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

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

28 (6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs
29 or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in
30 selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar
31 inducement, except advertising matter of nominal value, to either trade or consumer buyers:
32 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein
33 contained ~~in this section shall prohibit~~ prohibits a brewer from sponsoring any professional or
34 amateur athletic event or from providing prizes or awards for participants and winners in any
35 events: *Provided, however*, That no event shall be sponsored which permits actual participation
36 by athletes or other persons who are minors, unless specifically authorized by the commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of
111 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the
112 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those

113 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
114 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of
115 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her
116 employees, servants or agents. Any agent, servant or employee who has improperly sold,
117 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age
118 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or
119 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual
120 less than twenty-one years of age is subject to termination from employment, and the employer
121 shall have no civil liability for the termination.

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

130 (3) "Transaction scan" means the process by which a person checks, by means of a
131 transaction scan device, the age and identity of the cardholder, and "transaction scan device"
132 means any commercial device or combination of devices used at a point of sale that is capable
133 of deciphering in an electronically readable format the information enclosed on the magnetic strip
134 or bar code of a driver's license or other governmental identity card.

135 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or
136 be considered to prohibit any licensee from employing any person who is at least eighteen years
137 of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating
138 beer as defined in this article. With the prior approval of the commissioner, a licensee whose

139 principal business is the sale of food or consumer goods or the providing of recreational activities,
140 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,
141 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ
142 persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That
143 the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:
144 *Provided, however*, That the authorization to employ persons under the age of eighteen years
145 shall be clearly indicated on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

~~ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.~~

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

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

ARTICLE 4. LICENSES.

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

1 (a) *Sales of liquor.* — An operator of a distillery or a mini-distillery may offer liquor for retail
2 sale to customers from the distillery or the mini-distillery for consumption off premises only. Except
3 for free complimentary samples offered pursuant to section one, article six of this chapter,
4 customers are prohibited from consuming any liquor on the premises of the distillery or the mini-
5 distillery.

6 (b) *Retail sales.* — Every licensed distillery or mini-distillery shall comply with the
7 provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two,
8 twenty-three, twenty-four, twenty-five and twenty-six, article three-a of this chapter and the
9 provisions of articles three and four of this chapter applicable to liquor retailers and distillers;

10 Provided, That a licensed distillery or mini-distillery may offer samples per subsection (a) of this
11 section and make retail sales of alcoholic liquors manufactured by that licensed distillery or mini-
12 distillery for consumption off the premises on Sundays beginning at ten o'clock a.m.

13 (c) *Payment of taxes and fees.* — The distillery or mini-distillery shall pay all taxes and
14 fees required of licensed retailers and meet applicable licensing provisions as required by this
15 chapter and by rule of the commissioner, except for payments of the wholesale markup
16 percentage and the handling fee provided by rule of the commissioner: *Provided, That all liquor*
17 *for sale to customers from the distillery or the mini-distillery for off-premises consumption shall be*
18 *subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid*
19 *to the commissioner: Provided, however, That no liquor sold by the distillery or mini-distillery shall*
20 *be priced less than the price set by the commissioner pursuant to section seventeen, article three-*
21 *a of this chapter.*

22 (d) *Payments to market zone retailers.* — Each distillery or mini-distillery shall submit to
23 the commissioner two percent of the gross sales price of each retail liquor sale for the value of all
24 sales at the distillery or the mini-distillery each month. This collection shall be distributed by the
25 commissioner, at least quarterly, to each market zone retailer located in the distillery or mini-
26 distillery's market zone, proportionate to each market zone retailer's annual gross prior years
27 pretax value sales. The maximum amount of market zone payments that a distillery or mini-
28 distillery shall be required to submit to the commissioner is \$15,000 per annum.

29 (e) *Limitations on licensees.* — No distillery or mini-distillery may sell more than three
30 thousand gallons of product at the distillery or mini-distillery location the initial two years of
31 licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery
32 location by two thousand gallons following the initial twenty-four-month period of licensure and
33 may increase sales at the distillery or mini-distillery location each subsequent twenty-four-month
34 period by two thousand gallons, not to exceed ten thousand gallons a year of total sales at the
35 distillery or mini-distillery location. No licensed mini-distillery may produce more than fifty

36 thousand gallons per calendar year at the mini-distillery location. No more than one distillery or
37 mini-distillery license may be issued to a single person or entity and no person may hold both a
38 distillery and a mini-distillery license.

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

39 (a) *Sales of wine.* — An operator of a winery or farm winery may offer wine produced by
40 the winery or farm winery for retail sale to customers from the winery or farm winery for
41 consumption off the premises only. Except for free complimentary samples offered pursuant to
42 section one, article six of this chapter, customers are prohibited from consuming any wine on the
43 premises of the winery or farm winery, unless such winery or farm winery has obtained a
44 multicapacity winery or farm winery license.

45 (b) *Retail sales.* — Every licensed winery or farm winery shall comply with the provisions
46 of articles three, four and eight of this chapter as applicable to wine retailers, wineries and
47 suppliers when properly licensed in such capacities: Provided, That a licensed winery or farm
48 winery may offer complimentary samples per subsection (a) of this section and make retail sales
49 of wine manufactured by that licensed winery or farm winery for consumption off the premises on
50 Sundays beginning at ten o'clock a.m.

51 (c) *Payment of taxes and fees.* — The winery or farm winery shall pay all taxes and fees
52 required of licensed wine retailers and meet applicable licensing provisions as required by this
53 chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier
54 shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each
55 month, as provided in article eight of this chapter.

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

58 (e) *Limitations on licensees.* — A winery or farm winery must maintain separate winery or
59 farm winery supplier, retailer and direct shipper licenses when acting in one or more of those
60 capacities, and must pay all associated license fees, unless such winery or farm winery holds a

61 license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article
62 eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity
63 winery or farm winery license, may act as its own supplier; retailer for off-premises consumption
64 of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct
65 shipper for wine produced by the winery or farm winery. All wineries must use a distributor to
66 distribute and sell their wine in the state, except for farm wineries. No more than one winery or
67 farm winery license may be issued to a single person or entity and no person may hold both a
68 winery and a farm winery license.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

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

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

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

11 (4) 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 any person known to be deemed legally incompetent, or
13 for or to any person who is physically incapacitated due to consumption of nonintoxicating beer,
14 wine or alcoholic liquor or the use of drugs;

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

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

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

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

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

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

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

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

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

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

ARTICLE 8. SALE OF WINES.

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

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

NOTE: The purpose of this bill is to allow restaurants, private clubs, distilleries, mini-distilleries, and wineries to sell alcohol at ten o'clock a.m. on Sundays.

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