

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 298**

BY SENATOR WALTERS

[Introduced January 15, 2016;

Referred to the Committee on Economic Development;

and then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended; to  
 2 amend and reenact §60-3A-18 of said code; to amend and reenact §60-7-12 of said code;  
 3 and to amend and reenact §60-8-34 of said code, all relating to allowing restaurants,  
 4 private clubs and wineries to sell 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 §60-3A-18 of said code be amended and reenacted; that §60-7-12 of said code  
 3 be amended and reenacted; and that §60-8-34 of said code be amended and reenacted, all to  
 4 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 shall prohibit a licensee from crediting to a purchaser the actual price charged for  
19 packages or containers returned by the original purchaser as a credit on any sale, or from  
20 refunding to any purchaser the amount paid or deposited for the containers when title is retained  
21 by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the  
22 transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the  
23 nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and  
24 the distributor must initiate the transfer no later than noon of one business day after the delivery;

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

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

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

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

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

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

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

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

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

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

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

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

75           (17) For any Class A licensee, his, her, its or their servants, agents or employees, or for  
76 any licensee by or through any servants, agents or employees, to allow, suffer or permit any  
77 person less than eighteen years of age to loiter in or upon any licensed premises; except,  
78 however, that the provisions of this subdivision do not apply where a person under the age of  
79 eighteen years is in or upon the premises in the immediate company of his or her parent or  
80 parents, or where and while a person under the age of eighteen years is in or upon the premises  
81 for the purpose of and actually making a lawful purchase of any items or commodities therein

82 sold, or for the purchase of and actually receiving any lawful service therein rendered, including  
83 the consumption of any item of food, drink or soft drink therein lawfully prepared and served or  
84 sold for consumption on the premises;

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

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

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

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

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

107 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of  
108 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the  
109 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those  
110 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;  
111 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of  
112 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her  
113 employees, servants or agents. Any agent, servant or employee who has improperly sold,  
114 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age  
115 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or  
116 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual  
117 less than twenty-one years of age is subject to termination from employment, and the employer  
118 shall have no civil liability for the termination.

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

127 (3) "Transaction scan" means the process by which a person checks, by means of a  
128 transaction scan device, the age and identity of the cardholder, and "transaction scan device"  
129 means any commercial device or combination of devices used at a point of sale that is capable

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

132 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or  
 133 be considered to prohibit any licensee from employing any person who is at least eighteen years  
 134 of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating  
 135 beer as defined in this article. With the prior approval of the commissioner, a licensee whose  
 136 principal business is the sale of food or consumer goods or the providing of recreational activities,  
 137 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,  
 138 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ  
 139 persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That  
 140 the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:  
 141 *Provided, however*, That the authorization to employ persons under the age of eighteen years  
 142 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 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, and wineries to sell alcoholic beverages 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.