

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 479**

BY SENATORS BLAIR, RUCKER, TAKUBO, MARONEY AND

CLINE

[Originating in the Committee on Government

Organization; reported on March 13, 2017]

1 A BILL to amend and reenact §60-3-12 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §60-3A-17, §60-3A-18 and §60-3A-25 of said code, all relating to the  
3 regulation of liquor sales; providing for the days on which state stores and agencies may  
4 be open; eliminating the prohibition on the sale of liquor by retail licensees on any  
5 Sundays; providing for when retail licensees may not sell liquor on Sundays and other  
6 days; and providing that the wholesale markup on all liquor, other than wine, shall be a  
7 maximum of twenty-eight percent.

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

1 That §60-3-12 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §60-3A-17, §60-3A-18 and §60-3A-25 of said code be amended and  
3 reenacted, all to read as follows:

**ARTICLE 3. SALES BY COMMISSIONER.**

**§60-3-12. Days and hours state stores and agencies may open.**

1 The commission shall fix the days on which state stores shall be open and the hours of  
2 opening and closing, and the hours during which agencies may sell alcoholic liquors. ~~Stores shall~~  
3 ~~not be open nor shall agencies sell alcoholic liquors on:~~

4 ~~1. Sundays.~~

5 ~~2. Any general election day.~~

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

**§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from  
state; transportation and storage; method of payment.**

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to  
2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according  
3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor  
4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to

5 section three, article four of this chapter.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General  
7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to  
8 the average for the past three years. The net revenue derived from the sale of alcoholic liquors  
9 shall be deposited into the General Revenue Fund in the manner provided in section seventeen,  
10 article three of this chapter.

11 (c) Notwithstanding any provision of this code to the contrary, ~~the commissioner shall~~  
12 ~~specify the maximum a~~ wholesale markup percentage which not to exceed twenty-eight percent  
13 may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to  
14 determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail  
15 licensee shall purchase all liquor, other than wine, for resale in this state only from the  
16 commissioner, and the provisions of sections twelve and thirteen, article six of this chapter shall  
17 not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine  
18 from a wine distributor who is duly licensed under article eight of this chapter. All liquor, other than  
19 wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets  
20 operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion,  
21 may upon written request permit a retail licensee to store liquor at a site other than the retail outlet  
22 or outlets.

23 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic  
24 funds transfer which shall be initiated by the commissioner on the business day following the retail  
25 licensees order or by money order, certified check or cashier's check which shall be received by  
26 the commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: *Provided*,  
27 That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with  
28 surety acceptable to the commissioner from a financial institution acceptable to the commissioner  
29 guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks  
30 in an amount up to the amount of the letter of credit.

31 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of  
32 article seven of this chapter at less than one hundred ten percent of the retail licensee's cost as  
33 defined in section six, article eleven-a, chapter forty-seven of this code.

34 (2) A retail licensee may not sell liquor to the general public at less than one hundred ten  
35 percent of the retail licensee's cost as defined in section six, article eleven-a, chapter forty-seven  
36 of this code.

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

1 Retail licensees may not sell liquor on Sundays ~~and~~ between the hours of 12:00 a.m. and  
2 1:00 p.m. on Christmas day, or between the hours of 12:00 a.m. and 8:00 a.m. on all other days,  
3 except that wine and fortified wines may be sold on those days and at such times as authorized  
4 in section thirty-four, article eight of this chapter.

**§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.**

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

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

4 (2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor for or to  
5 any person under twenty-one years of age;

6 (3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor for or to  
7 any person visibly intoxicated;

8 (4) Sell or offer for sale any liquor ~~on any Sunday~~ or other than during the hours permitted  
9 for the sale of liquor by retail licensees as provided under this article;

10 (5) Permit the consumption by any person of any liquor;

11 (6) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand  
12 name of any liquor;

13 (7) Permit any person under eighteen years of age to sell, furnish or give liquor to any  
14 other person;

15 (8) Purchase or otherwise obtain liquor in any manner or from any source other than that  
16 specifically authorized in this article; or

17 (9) Permit any person to break the seal on any package or bottle of liquor.

18 (b) Any person who violates any provision of this article, except section twenty-four of this  
19 article, including, but not limited to, any provision of this section, or any rule promulgated by the  
20 board or the commissioner, or who makes any false statement concerning any material fact, or  
21 who omits any material fact with intent to deceive, in submitting an application for a retail license  
22 or for a renewal of a retail license or in any hearing concerning the suspension or revocation  
23 thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a  
24 misdemeanor and shall, upon conviction thereof, for each offense be fined not less than \$100 or  
25 more than \$5,000, or imprisoned in the county jail for not less than thirty days nor more than one  
26 year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts  
27 for offenses under this article.

28 (c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits  
29 any retail licensee from employing any person who is at least eighteen years of age to serve in  
30 any retail licensee's lawful employment at any retail outlet operated by such retail licensee, or  
31 from having such person sell or deliver liquor under the provisions of this article. With the prior  
32 approval of the commissioner, a retail licensee may employ persons at any retail outlet operated  
33 by such retail licensee who are less than eighteen years of age but at least sixteen years of age,  
34 but such persons' duties shall not include the sale or delivery of liquor: *Provided*, That the  
35 authorization to employ such persons under the age of eighteen years shall be clearly indicated  
36 on the retail license issued to any such retail licensee.

1

NOTE: The purpose of this bill is to allow sales of liquor by retail licensees after one o'clock p.m. on Sundays; and to transfer the authority to set the maximum wholesale markup percentage of all liquor, other than wine, from the commissioner to the Legislature.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.