

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2548

BY DELEGATE PUSHKIN, HOWELL, ROWE, LANE,

HAMRICK, STORCH, BYRD AND ROBINSON

[Introduced February 20, 2017; referred

to the Committee on Small Business,

Entrepreneurship and Economic Development then

the Judiciary.]

1 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended, relating
 2 to the use of outside speakers by persons licensed to manufacture, sale, possess for sale,
 3 transport or distribute nonintoxicating beer.

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 to read as follows:

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, nonintoxicating beer or cooler on weekdays between the hours of two o'clock
 5 a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., or a
 6 Class A retail dealer who sells nonintoxicating beer for on premises consumption only between
 7 the hours of two o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in
 8 section three-pp, article one, chapter seven of this code, on any Sunday, except in private clubs
 9 licensed under the provisions of article seven, chapter sixty of this code, where the hours shall
 10 conform with the hours of sale of alcoholic liquors;

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

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

17 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
 18 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to

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

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

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

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

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

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

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

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

63 (12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his
64 or her premises or to permit the use of loud musical instruments if either or any of the same may
65 disturb the peace and quietude of the community where the business is located: *Provided, That*
66 *a licensee may have speaker systems for outside broadcasting so long as the noise levels do not*
67 *create a public nuisance or violate local noise ordinances;* ~~*Provided, That no licensee may have*~~
68 ~~*in connection with his or her place of business any loudspeaker located on the outside of the*~~
69 ~~*licensed premises that broadcasts or carries music of any kind*~~

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

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

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

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

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

89 (18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer
90 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
91 beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose
92 principal place of business or licensed premises is within the assigned territory of another
93 distributor of such nonintoxicating beer: *Provided*, That nothing in this section is considered to
94 prohibit sales of convenience between distributors licensed in this state where one distributor

95 sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale;
96 and

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

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

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

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

112 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of
113 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the
114 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
115 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
116 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of
117 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her
118 employees, servants or agents. Any agent, servant or employee who has improperly sold,
119 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age
120 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or

121 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual
122 less than twenty-one years of age is subject to termination from employment, and the employer
123 shall have no civil liability for the termination.

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

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

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

146 *Provided, however,* That the authorization to employ persons under the age of eighteen years
147 shall be clearly indicated on the licensee's license.

NOTE: The purpose of this bill is to allow nonintoxicating beer licensees to have speakers outside of licensed premises as long as their use does not disturb the peace and quietude of community where the business is located.

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