

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 422

BY SENATOR BLAIR

[Introduced January 30, 2018; Referred
to the Committee on the Judiciary]

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 Sunday;
 5 providing for when retail licensees may not sell liquor on Sundays and other days; and
 6 providing that the wholesale markup on all liquor, other than wine, shall be a maximum of
 7 28 percent.

Be it enacted by the Legislature of West Virginia:

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 §60-
 5 4-3 of this code.

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 §60-3-17 of this
10 code.

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 28 percent may be
13 applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine
14 the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall
15 purchase all liquor, other than wine, for resale in this state only from the commissioner, and the
16 provisions of §60-6-12 and §60-6-13 of this code shall not apply to the transportation of the liquor:
17 *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed
18 under §60-8-1 *et seq.* of this code. All liquor, other than wine, purchased by retail licensees shall
19 be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided*,
20 *however*, That the commissioner, in his or her discretion, may upon written request permit a retail
21 licensee to store liquor at a site other than the retail outlet or outlets.

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

30 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-
31 7-1 *et seq.* of this code at less than 110 percent of the retail licensee's cost as defined in §47-
32 11A-6 of this code.

33 (2) A retail licensee may not sell liquor to the general public at less than ~~one hundred ten~~

34 110 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

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

1 Retail licensees may not sell liquor between the hours of 12:00 a.m. and 1:00 p.m. on
2 Sundays, ~~and~~ at any time on Christmas day, or between the hours of 12:00 a.m. and 8:00 a.m.
3 on all other days. except that wine and fortified wines may be sold on those days and at such
4 times as authorized in §60-8-34 of this code.

§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 21 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 18 years of age to sell, furnish, or give liquor to any other
14 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 §60-3A-24 of this code,
19 including, but not limited to, any provision of this section, or any rule promulgated by the board or

20 the commissioner, or who makes any false statement concerning any material fact, or who omits
21 any material fact with intent to deceive, in submitting an application for a retail license or for a
22 renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or
23 who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor
24 and, ~~shall~~, upon conviction thereof, for each offense, shall be fined not less than \$100 or more
25 than \$5,000, or ~~imprisoned in the county~~ confined in jail for not less than 30 days nor more than
26 one year, or both fined and ~~imprisoned~~ confined. Magistrates have concurrent jurisdiction with the
27 circuit courts 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 18 years of age to serve in any retail
30 licensee's lawful employment at any retail outlet operated by such retail licensee, or from having
31 such person sell or deliver liquor under the provisions of this article. With the prior approval of the
32 commissioner, a retail licensee may employ persons at any retail outlet operated by such retail
33 licensee who are less than 18 years of age but at least 16 years of age, but such persons' duties
34 shall not include the sale or delivery of liquor: *Provided*, That the authorization to employ such
35 persons under the age of 18 years shall be clearly indicated on the retail license issued to any
36 such retail licensee.

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.