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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993



ENROLLED

Com. Sub. for
SENATE BILL NO. 14

(By Senator *Wooten*)



PASSED *April 10,* 1993

In Effect *90 days from* Passage .

E N R O L L E D

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 14

(SENATOR WOOTON, *original sponsor*)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three of chapter sixty of said code; to amend and reenact section twenty-four, article three-a of said chapter; to amend and reenact sections twelve, twelve-a and thirteen of said chapter; and to amend and reenact section twenty-a, article eight of said chapter, all relating to prohibiting persons under the age of twenty-one from purchasing, consuming, possessing, selling and serving nonintoxicating beer, wine and alcoholic liquor; allowing employment by licensees of underage persons in certain instances; allowing exceptions for underage law enforcement and commission agents; providing criminal penalties; raising the amount to be retained in enforcement funds at fiscal year end; prohibiting the sale or giving of nonintoxicating beer, wine or alcoholic liquors to certain persons.

MDH.
article seven

Be it enacted by the Legislature of West Virginia:

That sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-two, article three of chapter sixty of said code be amended and reenacted; that section twenty-four, article three-a of said chapter be amended and reenacted; that sections twelve, twelve-a and thirteen of said chapter be amended and reenacted; and that section twenty-a, article eight of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.

1 (a) Any person under the age of twenty-one years
2 who purchases, consumes, sells, possesses or serves
3 nonintoxicating beer is guilty of a misdemeanor, and,
4 upon conviction thereof, shall be fined in an amount
5 not to exceed five hundred dollars or shall be incarcer-
6 ated in the county jail for a period not to exceed
7 seventy-two hours, or both fined and imprisoned, or,
8 in lieu of such fine and incarceration, may, for the
9 first offense, be placed on probation for a period not to
10 exceed one year.

11 Nothing in this article, nor any rule or regulation of
12 the commissioner, shall prevent or be deemed to
13 prohibit any person who is at least eighteen years of
14 age from serving in the lawful employment of any
15 licensee, which may include the sale or delivery of
16 nonintoxicating beer as defined in this article. Fur-
17 ther, nothing in this article, nor any rule or regulation
18 of the commissioner, shall prevent or be deemed to
19 prohibit any person who is less than eighteen but at
20 least sixteen years of age from being employed by a
21 licensee whose principal business is the sale of food or
22 consumer goods or the providing of recreational
23 activities, including, but not limited to, nationally
24 franchised fast food outlets, family-oriented restau-
25 rants, bowling alleys, drug stores, discount stores,
26 grocery stores and convenience stores: *Provided*, That
27 such person shall not sell or deliver nonintoxicating

28 beer.

29 Nothing in this subsection shall prohibit a person
30 who is at least eighteen years of age from purchasing
31 or possessing nonintoxicating beer when he or she is
32 acting upon the request of or under the direction and
33 control of any member of a state, federal or local law-
34 enforcement agency or the West Virginia alcohol
35 beverage administration while the agency is conduct-
36 ing an investigation or other activity relating to the
37 enforcement of the alcohol beverage control statutes
38 and the rules and regulations of the commissioner.

39 (b) Any person under the age of twenty-one years
40 who, for the purpose of purchasing nonintoxicating
41 beer, misrepresents his or her age, or who for such
42 purpose presents or offers any written evidence of age
43 which is false, fraudulent or not actually his or her
44 own, or who illegally attempts to purchase nonintox-
45 icating beer, is guilty of a misdemeanor, and, upon
46 conviction thereof, shall be fined in an amount not to
47 exceed fifty dollars or shall be imprisoned in the
48 county jail for a period not to exceed seventy-two
49 hours, or both such fine and imprisonment, or, in lieu
50 of such fine and imprisonment, may, for the first
51 offense, be placed on probation for a period not
52 exceeding one year.

53 (c) Any person who shall knowingly buy for, give to
54 or furnish nonintoxicating beer to anyone under the
55 age of twenty-one to whom they are not related by
56 blood or marriage is guilty of a misdemeanor and
57 shall, upon conviction thereof, be fined in an amount
58 not to exceed one hundred dollars or shall be impris-
59 oned in the county jail for a period not to exceed ten
60 days, or both such fine and imprisonment.

61 (d) Any person who at any one time transports into
62 the state for their personal use, and not for resale,
63 more than six and seventy-five hundredths gallons of
64 nonintoxicating beer, upon which the West Virginia
65 barrel tax has not been imposed, shall be guilty of a
66 misdemeanor and shall, upon conviction thereof, be
67 fined in an amount not to exceed one hundred dollars

68 and have all the untaxed nonintoxicating beer in their
69 possession at the time of the arrest confiscated, or
70 imprisoned for ten days in the county jail, or both
71 fined and imprisoned.

72 If the Congress of the United States repeals the
73 mandate established by the Surface Transportation
74 Assistance Act of 1982 relating to national uniform
75 drinking age of twenty-one as found in section six of
76 Public Law 98-363, or a court of competent jurisdiction
77 declares the provision to be unconstitutional or other-
78 wise invalid, it is the intent of the Legislature that the
79 provisions contained in this section and section eigh-
80 teen of this article which prohibit the sale, furnishing,
81 giving, purchase or ownership of nonintoxicating beer
82 to or by a person who is less than twenty-one years of
83 age shall be null and void and the provisions therein
84 shall thereafter remain in effect and apply to the sale,
85 furnishing, giving, purchase or ownership of nonintox-
86 icating beer to or by a person who is less than
87 nineteen years of age.

**§11-16-23. Revocation or suspension of license; monetary
penalty; hearing assessment of costs; estab-
lishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that
2 a licensee has: (i) Violated the provisions of section
3 eighteen of this article or of chapter sixty of this code;
4 (ii) acted in such a way as would have precluded
5 initial or renewal licensure; or (iii) violated any rule
6 or order promulgated by the commissioner, the com-
7 missioner may:

8 (1) Revoke the licensee's license;

9 (2) Suspend the licensee's license;

10 (3) Place the licensee on probationary status for a
11 period not to exceed twelve months; and

12 (4) Impose a monetary penalty not to exceed one
13 thousand dollars for each violation where revocation is
14 not imposed.

15 (b) Any monetary penalty assessed and collected by

16 the commissioner shall be transmitted to the state
 17 treasurer for deposit into the state treasury to the
 18 credit of a special revenue fund designated the "Non-
 19 intoxicating Beer Enforcement Fund", which is here-
 20 by created. All moneys collected, received and depos-
 21 ited in the "Nonintoxicating Beer Enforcement Fund"
 22 shall be kept and maintained for expenditures by the
 23 commissioner for the purpose of enforcement of the
 24 statutes and rules pertaining to nonintoxicating beer
 25 and shall not be treated by the state treasurer or state
 26 auditor as any part of the general revenue of the state.
 27 At the end of each fiscal year all funds in the nonin-
 28 toxicating beer enforcement fund in excess of twenty
 29 thousand dollars shall be transferred to the general
 30 revenue fund.

31 (c) In addition to the grounds for revocation, suspen-
 32 sion or other sanction of a license set forth in subsec-
 33 tion (a) of this section, conviction of the licensee of any
 34 offense constituting a violation of the laws of this state
 35 or of the United States relating to nonintoxicating beer
 36 or alcoholic liquor shall be mandatory grounds for
 37 such sanctioning of a license. Conviction of the licen-
 38 see of any violation of the laws of this state or of the
 39 United States relating to prostitution or the sale,
 40 possession or distribution of narcotics or controlled
 41 substances shall be mandatory grounds for revocation
 42 of the licensee's license for a period of at least one
 43 year.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-22. Sales to certain persons prohibited.

- 1 (a) Alcoholic liquors and nonintoxicating beer as
 2 defined in section three, article sixteen, chapter eleven
 3 of this code shall not be sold to a person who is:
- 4 (1) Less than twenty-one years of age;
 - 5 (2) An habitual drunkard;
 - 6 (3) Intoxicated;

7 (4) Addicted to the use of any controlled substance as
8 defined by any of the provisions of chapter sixty-a of
9 this code; or

10 (5) Mentally incompetent.

11 (b) It shall be a defense to a violation of subdivision
12 (1), subsection (a) of this section if the seller shows
13 that the purchaser:

14 (1) Produced written evidence which showed his or
15 her age to be at least the required age for purchase
16 and which bore a physical description of the person
17 named on the writing which reasonably described the
18 purchaser; or

19 (2) Produced evidence of other facts that reasonably
20 indicated at the time of sale that the purchaser was at
21 least the required age.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-24. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years
2 who purchases, consumes, sells, serves or possesses
3 alcoholic liquor is guilty of a misdemeanor, and, upon
4 conviction thereof, shall be fined in an amount not to
5 exceed five hundred dollars or shall be incarcerated in
6 the county jail for a period not to exceed seventy-two
7 hours, or both fined and imprisoned, or, in lieu of such
8 fine and incarceration, may, for the first offense, be
9 placed on probation for a period not to exceed one
10 year.

11 Nothing in this article, nor any rule or regulation of
12 the commissioner, shall prevent or be deemed to
13 prohibit any person who is at least eighteen years of
14 age from serving in the lawful employment of a
15 licensee which includes the sale and serving of alco-
16 holic liquor.

17 Nothing in this subsection shall prohibit a person
18 who is at least eighteen years of age from purchasing
19 or possessing alcoholic liquor when he or she is acting
20 upon the request of or under the direction and control
21 of any member of a state, federal or local law-

22 enforcement agency or the West Virginia alcohol
23 beverage administration while the agency is conduct-
24 ing an investigation or other activity relating to the
25 enforcement of the alcohol beverage control statutes
26 and the rules and regulations of the commissioner.

27 (b) Any person under the age of twenty-one years
28 who, for the purpose of purchasing liquor from a retail
29 licensee, misrepresents his or her age, or who for such
30 purpose presents or offers any written evidence of age
31 which is false, fraudulent or not actually his or her
32 own, or who illegally attempts to purchase liquor from
33 a retail licensee, is guilty of a misdemeanor, and, upon
34 conviction thereof, shall be fined in an amount not to
35 exceed fifty dollars or imprisoned in the county jail for
36 a period not to exceed seventy-two hours, or both
37 fined and imprisoned, or, in lieu of such fine and
38 imprisonment, may, for the first offense, be placed on
39 probation for a period not exceeding one year.

40 (c) Any person who knowingly buys for, gives to or
41 furnishes to anyone under the age of twenty-one to
42 whom he or she is not related by blood or marriage
43 any liquor from whatever source, is guilty of a
44 misdemeanor and shall, upon conviction thereof, be
45 fined in an amount not to exceed one hundred dollars
46 or imprisoned in the county jail for a period not to
47 exceed ten days, or both fined and imprisoned.

48 (d) No person while on the premises of a retail outlet
49 may consume liquor or break the seal on any package
50 or bottle of liquor. Any person who violates the
51 provisions of this subsection is guilty of a misdemea-
52 or and shall, upon conviction thereof, be fined in an
53 amount not to exceed one hundred dollars or impri-
54 soned in the county jail for a period not to exceed ten
55 days, or both fined and imprisoned.

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, employ-
2 ee or member thereof, on such licensee's premises to:

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

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

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

17 (4) Sell, give away or permit the sale of, gift to or the
18 procurement of any nonintoxicating beer, wine or
19 alcoholic liquors, for or to any person known to be
20 deemed legally incompetent, or for or to any person
21 who is physically incapacitated due to consumption of
22 nonintoxicating beer, wine or alcoholic liquor or the
23 use of drugs;

24 (5) Sell, give or dispense nonintoxicating beer, wine
25 or alcoholic liquors in or on any licensed premises or
26 in any rooms directly connected therewith, between
27 the hours of three o'clock a.m. and one o'clock p.m. on
28 any Sunday;

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

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

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

40 (9) (A) Employ any person who is less than eighteen

41 years of age in a position where the primary respon-
42 sibility for such employment is to sell, furnish or give
43 nonintoxicating beer, wine or alcoholic liquors to any
44 person;

45 (B) Employ any person who is between the ages of
46 eighteen and twenty-one who is not directly super-
47 vised by a person aged twenty-one or over in a
48 position where the primary responsibility for such
49 employment is to sell, furnish or give nonintoxicating
50 beer, wine or alcoholic liquors to any person; or

51 (10) Violate any reasonable rule of the commissioner.

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

56 (c) Any person who violates any of the foregoing
57 provisions is guilty of a misdemeanor, and, upon
58 conviction thereof, shall be fined not less than five
59 hundred dollars nor more than one thousand dollars,
60 or imprisoned in the county jail for a period not to
61 exceed one year, or both fined and imprisoned.

§60-7-12a. Unlawful acts by persons.

1 (a) A person under the age of twenty-one years may
2 not order, pay for, share the cost of or attempt to
3 purchase any nonintoxicating beer, wine or alcoholic
4 liquors from a licensee or consume any nonintoxicat-
5 ing beer, wine or alcoholic liquors purchased from a
6 licensee or possess any nonintoxicating beer, wine or
7 alcoholic liquors purchased from a licensee. Any
8 person under the age of twenty-one years who violates
9 any provisions of this subsection is guilty of a misde-
10 meanor, and, upon conviction thereof, shall be fined in
11 an amount not to exceed five hundred dollars or
12 imprisoned in the county jail for a period not to
13 exceed seventy-two hours, or both fined and impris-
14 oned, and, in addition to such fine and imprisonment,
15 may, for the first offense, be placed on probation for
16 a period not to exceed one year. *Provided*, That
17 nothing in this subsection shall prohibit a person who

18 is at least eighteen years of age from purchasing or
19 possessing nonintoxicating beer, wine or alcoholic
20 liquors when he or she is acting upon the request of
21 or under the direction and control of any member of
22 a state, federal or local law-enforcement agency or the
23 West Virginia alcohol beverage administration while
24 the agency is conducting an investigation or other
25 activity relating to the enforcement of the alcohol
26 beverage control statutes and the rules and regulations
27 of the commissioner.

28 (b) Any person under the age of twenty-one years
29 who, for the purpose of purchasing nonintoxicating
30 beer, wine or alcoholic liquors from a licensee, misre-
31 presents his or her age, or who for such purpose
32 presents or offers any written evidence of age which
33 is false, fraudulent or not actually his or her own, or
34 who illegally attempts to purchase nonintoxicating
35 beer, wine or alcoholic liquors from a licensee, is
36 guilty of a misdemeanor, and, upon conviction thereof,
37 shall be fined in an amount not to exceed five hundred
38 dollars or shall be imprisoned in the county jail for a
39 period not to exceed seventy-two hours, or both such
40 fine and imprisonment, or, in lieu of such fine and
41 imprisonment, may, for the first offense, be placed on
42 probation for a period not exceeding one year.

43 (c) Any person who knowingly buys for, gives to or
44 furnishes to anyone under the age of twenty-one, any
45 nonintoxicating beer, wine or alcoholic liquors pur-
46 chased from a licensee, is guilty of a misdemeanor and
47 shall, upon conviction thereof, be fined not more than
48 five hundred dollars, or imprisoned in the county jail
49 not more than ten days, or both fined and imprisoned.

**§60-7-13. Revocation or suspension of license; monetary
penalty; hearing; assessment of costs; estab-
lishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that
2 a licensee has: (i) Violated the provisions of article
3 sixteen, chapter eleven or of this chapter; (ii) acted in
4 such a way as would have precluded initial or renewal
5 licensure; or (iii) violated any rule or order promulgat-

6 ed by the commissioner, the commissioner may
7 impose any one or a combination of the following
8 sanctions:

9 (1) Revoke the licensee's license;

10 (2) Suspend the licensee's license;

11 (3) Place the licensee on probationary status for a
12 period not to exceed twelve months; and

13 (4) Impose a monetary penalty not to exceed one
14 thousand dollars for each violation where revocation is
15 not imposed.

16 (b) Any monetary penalty assessed and collected by
17 the commissioner shall be transmitted to the state
18 treasurer for deposit into the state treasury to the
19 credit of a special revenue fund designated "The
20 Alcohol Beverage Control Enforcement Fund", which
21 is hereby created. All moneys collected, received and
22 deposited in the "Alcohol Beverage Control Enforce-
23 ment Fund" shall be kept and maintained for expen-
24 ditures by the commissioner for the purpose of
25 enforcement of the statutes and rules pertaining to
26 alcoholic liquor, and shall not be treated by the state
27 treasurer or state auditor as any part of the general
28 revenue of the state. At the end of each fiscal year all
29 funds in the alcohol beverage control enforcement
30 fund in excess of twenty thousand dollars shall be
31 transferred to the general revenue fund.

32 (c) In addition to the grounds for revocation, suspen-
33 sion or other sanction of a license set forth in subsec-
34 tion (a) of this section, conviction of the licensee of any
35 offense constituting a violation of the laws of this state
36 or of the United States relating to alcoholic liquor,
37 nonintoxicating beer or gambling shall be mandatory
38 grounds for such sanctioning of a license. Conviction of
39 the licensee of any violation of the laws of this state or
40 of the United States relating to prostitution, or the
41 sale, possession or distribution of narcotics or con-
42 trolled substances shall be mandatory grounds for
43 revocation of the licensee's license for a period of at
44 least one year.

ARTICLE 8. SALE OF WINES.

§60-8-20a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years
2 who purchases, consumes, sells, possesses or serves
3 wine or other alcoholic liquor is guilty of a misde-
4 meanor, and, upon conviction thereof, shall be fined in
5 an amount not to exceed five hundred dollars or shall
6 be incarcerated in the county jail for a period not to
7 exceed seventy-two hours, or both fined and impri-
8 soned, or, in lieu of such fine and incarceration, may,
9 for the first offense, be placed on probation for a
10 period not to exceed one year.

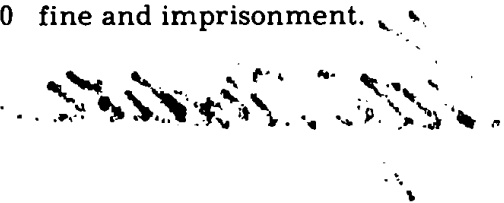
11 Nothing in this article, nor any rule or regulation of
12 the commissioner, shall prevent or be deemed to
13 prohibit any person who is at least eighteen years of
14 age from serving in the lawful employment of any
15 licensee, which may include the sale or delivery of
16 wine as defined in this article. Further, nothing in this
17 article, nor any rule or regulation of the commission-
18 er, shall prevent or be deemed to prohibit any person
19 who is less than eighteen but at least sixteen years of
20 age from being employed by a licensee whose princi-
21 pal business is the sale of food or consumer goods or
22 the providing of recreational activities, including, but
23 not limited to, nationally franchised fast food outlets,
24 family-oriented restaurants, bowling alleys, drug
25 stores, discount stores, grocery stores and convenience
26 stores: *Provided*, That such person shall not sell or
27 deliver wine or alcoholic liquor.

28 Nothing in this subsection shall prohibit a person
29 who is at least eighteen years of age from purchasing
30 or possessing wine or alcoholic liquor when he or she
31 is acting upon the request of or under the direction
32 and control of any member of a state, federal or local
33 law-enforcement agency or the West Virginia alcohol
34 beverage administration while the agency is conduct-
35 ing an investigation or other activity relating to the
36 enforcement of the alcohol beverage control statutes
37 and the rules and regulations of the commissioner.

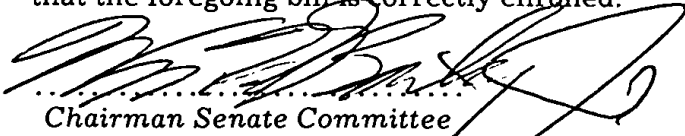
38 (b) Any person under the age of twenty-one years

39 who, for the purpose of purchasing wine or other
40 alcoholic liquors from a licensee, misrepresents his or
41 her age, or who for such purpose presents or offers
42 any written evidence of age which is false, fraudulent
43 or not actually his or her own, or who illegally
44 attempts to purchase wine or other alcoholic liquors, is
45 guilty of a misdemeanor, and, upon conviction thereof,
46 shall be fined in an amount not to exceed fifty dollars
47 or shall be imprisoned in the county jail for a period
48 not to exceed seventy-two hours, or both such fine and
49 imprisonment, or, in lieu of such fine and imprison-
50 ment, may, for the first offense, be placed on proba-
51 tion for a period not exceeding one year.

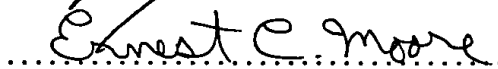
52 (c) Any person who shall knowingly buy for, give to
53 or furnish wine or other alcoholic liquors from any
54 source to anyone under the age of twenty-one to
55 whom they are not related by blood or marriage, is
56 guilty of a misdemeanor and shall, upon conviction
57 thereof, be fined in an amount not to exceed one
58 hundred dollars or shall be imprisoned in the county
59 jail for a period not to exceed ten days, or both such
60 fine and imprisonment.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



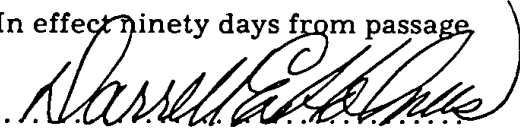
Chairman Senate Committee



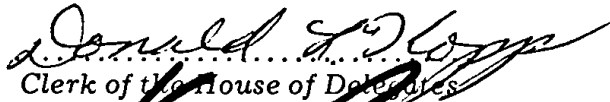
Chairman House Committee

Originated in the Senate.

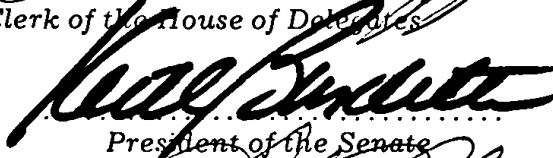
In effect ninety days from passage



Clerk of the Senate



Clerk of the House of Delegates

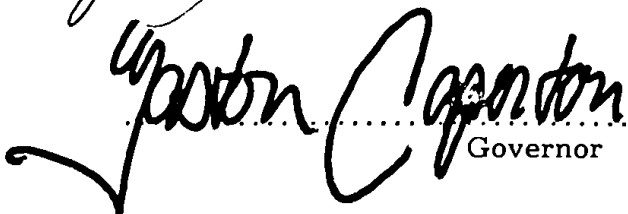


President of the Senate



Speaker House of Delegates

The within *is approved* this the *6th*
day of *May*, 1993.



Governor

PRESENT

GOVERN

Date 4/24/93

Time 1:35pm