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WEST VIRGINIA LEGISLATURE

Regular Session, 2003



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Committee Substitute for

SENATE BILL NO. 535

(By Senator Kessler, et al)



PASSED March 8, 2003

In Effect 90 days from Passage

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SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 535

(BY SENATORS KESSLER, HUNTER, ROWE, FANNING, MINARD,
EDGELL, WHITE, WEEKS AND PREZIOSO, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three-a, chapter sixty of said code by adding thereto a new section, designated section twenty-five-a; and to amend and reenact section twenty, article eight of said chapter, all relating to the sale of alcohol, wine and beer to minors; mandatory carding of purchasers of alcohol, wine and beer; and defining terms.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; that article three-a, chapter sixty of said code be amended by adding thereto a new section, designated section twenty-five-a; and that section twenty, article eight of said chapter be amended and reenacted, all to 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
3 or employees to sell, give or dispense, or any individual to
4 drink or consume, in or on any licensed premises or in any
5 rooms directly connected therewith, nonintoxicating beer
6 or cooler on weekdays between the hours of two o'clock
7 a.m. and seven o'clock a.m., or between the hours of two
8 o'clock a.m. and one o'clock p.m., on any Sunday, except
9 in private clubs licensed under the provisions of article
10 seven, chapter sixty of this code, where the hours shall
11 conform with the hours of sale of alcoholic liquors;

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

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

21 (4) For any distributor to sell or offer to sell, or any
22 retailer to purchase or receive, any nonintoxicating beer as
23 defined in this article, except for cash and no right of
24 action shall exist to collect any claims for credit extended
25 contrary to the provisions of this subdivision. Nothing
26 herein contained shall prohibit a licensee from crediting to

27 a purchaser the actual price charged for packages or
28 containers returned by the original purchaser as a credit
29 on any sale, or from refunding to any purchaser the
30 amount paid or deposited for the containers when title is
31 retained by the vendor: *Provided*, That a distributor may
32 accept an electronic transfer of funds if the transfer of
33 funds is initiated by an irrevocable payment order on the
34 invoiced amount for the nonintoxicating beer. The cost of
35 the electronic fund transfer shall be borne by the retailer
36 and the distributor must initiate the transfer no later than
37 noon of one business day after the delivery;

38 (5) For any brewer or distributor or brewpub or his, her,
39 its or their agents to transport or deliver nonintoxicating
40 beer as defined in this article to any retail licensee on
41 Sunday;

42 (6) For any brewer or distributor to give, furnish, rent or
43 sell any equipment, fixtures, signs or supplies directly or
44 indirectly or through a subsidiary or affiliate to any
45 licensee engaged in selling products of the brewing
46 industry at retail or to offer any prize, premium, gift or
47 other similar inducement, except advertising matter of
48 nominal value, to either trade or consumer buyers: *Pro-*
49 *vided*, That a distributor may offer, for sale or rent, tanks
50 of carbonic gas. Nothing herein contained shall prohibit
51 a brewer from sponsoring any professional or amateur
52 athletic event or from providing prizes or awards for
53 participants and winners in any events: *Provided, how-*
54 *ever*, That no event shall be sponsored which permits
55 actual participation by athletes or other persons who are
56 minors, unless specifically authorized by the commis-
57 sioner;

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

61 (8) For any licensee except the holder of a license to
62 operate a private club issued under the provisions of

63 article seven, chapter sixty of this code or a holder of a
64 license or a private wine restaurant issued under the
65 provisions of article eight of said chapter to possess a
66 federal license, tax receipt or other permit entitling,
67 authorizing or allowing the licensee to sell liquor or
68 alcoholic drinks other than nonintoxicating beer;

69 (9) For any licensee to obstruct the view of the interior of
70 his or her premises by enclosure, lattice, drapes or any
71 means which would prevent plain view of the patrons
72 occupying the premises. The interior of all licensed
73 premises shall be adequately lighted at all times: *Provided,*
74 That provisions of this subdivision do not apply to the
75 premises of a Class B retailer, the premises of a private
76 club licensed under the provisions of article seven, chapter
77 sixty of this code or the premises of a private wine restau-
78 rant licensed under the provisions of article eight of said
79 chapter;

80 (10) For any licensee to manufacture, import, sell, trade,
81 barter, possess or acquiesce in the sale, possession or
82 consumption of any alcoholic liquors on the premises
83 covered by a license or on premises directly or indirectly
84 used in connection therewith: *Provided,* That the prohibi-
85 tion contained in this subdivision with respect to the
86 selling or possessing or to the acquiescence in the sale,
87 possession or consumption of alcoholic liquors is not
88 applicable with respect to the holder of a license to operate
89 a private club issued under the provisions of article seven,
90 chapter sixty of this code nor shall the prohibition be
91 applicable to a private wine restaurant licensed under the
92 provisions of article eight of said chapter insofar as the
93 private wine restaurant is authorized to serve wine;

94 (11) For any retail licensee to sell or dispense nonintoxi-
95 cating beer, as defined in this article, purchased or ac-
96 quired from any source other than a distributor, brewer or
97 manufacturer licensed under the laws of this state;

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

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

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

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

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

120 (17) For any Class A licensee, his, her, its or their ser-
121 vants, agents or employees, or for any licensee by or
122 through any servants, agents or employees, to allow, suffer
123 or permit any person less than eighteen years of age to
124 loiter in or upon any licensed premises; except, however,
125 that the provisions of this subdivision do not apply where
126 a person under the age of eighteen years is in or upon the
127 premises in the immediate company of his or her parent or
128 parents, or where and while a person under the age of
129 eighteen years is in or upon the premises for the purpose of
130 and actually making a lawful purchase of any items or
131 commodities therein sold, or for the purchase of and
132 actually receiving any lawful service therein rendered,

133 including the consumption of any item of food, drink or
134 soft drink therein lawfully prepared and served or sold for
135 consumption on the premises;

136 (18) For any distributor to sell, offer for sale, distribute
137 or deliver any nonintoxicating beer outside the territory
138 assigned to any distributor by the brewer or manufacturer
139 of nonintoxicating beer or to sell, offer for sale, distribute
140 or deliver nonintoxicating beer to any retailer whose
141 principal place of business or licensed premises is within
142 the assigned territory of another distributor of such
143 nonintoxicating beer: *Provided*, That nothing herein is
144 considered to prohibit sales of convenience between
145 distributors licensed in this state wherein one distributor
146 sells, transfers or delivers to another distributor a particu-
147 lar brand or brands for sale at wholesale; and

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

152 (b) Any person who violates any provision of this article
153 including, but not limited to, any provision of this section,
154 or any rule, or order lawfully promulgated by the commis-
155 sioner, or who makes any false statement concerning any
156 material fact in submitting application for license or for a
157 renewal of a license or in any hearing concerning the
158 revocation thereof, or who commits any of the acts herein
159 declared to be unlawful is guilty of a misdemeanor and,
160 upon conviction thereof, shall be punished for each offense
161 by a fine of not less than twenty-five nor more than five
162 hundred dollars, or confined in the county or regional jail
163 for not less than thirty days nor more than six months, or
164 by both fine and confinement. Magistrates shall have
165 concurrent jurisdiction with the circuit court and any
166 other courts having criminal jurisdiction in their county
167 for the trial of all misdemeanors arising under this article.

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

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

171 (B) Can demonstrate that it requires each employee,
172 servant or agent to verify the age of any individual to
173 whom nonintoxicating beer is sold, furnished or given
174 away by the use of the transaction device may not be
175 subject to: (i) Any criminal penalties whatsoever, including
176 those set forth in subsection (b) of this section; (ii) any
177 administrative penalties from the commissioner; or (iii)
178 any civil liability whatsoever for the improper sale,
179 furnishing or giving away of nonintoxicating beer to an
180 individual who is less than twenty-one years of age by one
181 of his or her employees, servants or agents. Any agent,
182 servant or employee who has improperly sold, furnished or
183 given away nonintoxicating beer to an individual less than
184 twenty-one years of age is subject to the criminal penalties
185 of subsection (b) of this section. Any agent, servant or
186 employee who has improperly sold, furnished or given
187 away nonintoxicating beer to an individual less than
188 twenty-one years of age is subject to termination from
189 employment, and the employer shall have no civil liability
190 for the termination.

191 (2) For purposes of this section, a Class B licensee can
192 demonstrate that it requires each employee, servant or
193 agent to verify the age of any individual to whom nonin-
194 toxicating beer is sold by providing evidence: (A) That it
195 has developed a written policy which requires each
196 employee, servant or agent to verify the age of each
197 individual to whom nonintoxicating beer will be sold,
198 furnished or given away; (B) that it has communicated this
199 policy to each employee, servant or agent; and (C) that it
200 monitors the actions of its employees, servants or agents
201 regarding the sale, furnishing or giving away of nonintoxi-
202 cating beer and that it has taken corrective action for any
203 discovered noncompliance with this policy.

204 (3) "Transaction scan" means the process by which a
205 person checks, by means of a transaction scan device, the

206 age and identity of the cardholder, and “transaction scan
207 device” means any commercial device or combination of
208 devices used at a point of sale that is capable of decipher-
209 ing in an electronically readable format the information
210 enclosed on the magnetic strip or bar code of a driver’s
211 license or other governmental identity card.

212 (d) Nothing in this article nor any rule or regulation of
213 the commissioner shall prevent or be considered to pro-
214 hibit any licensee from employing any person who is at
215 least eighteen years of age to serve in the licensee’s lawful
216 employ, including the sale or delivery of nonintoxicating
217 beer as defined in this article. With the prior approval of
218 the commissioner, a licensee whose principal business is
219 the sale of food or consumer goods or the providing of
220 recreational activities, including, but not limited to,
221 nationally franchised fast food outlets, family-oriented
222 restaurants, bowling alleys, drug stores, discount stores,
223 grocery stores and convenience stores, may employ persons
224 who are less than eighteen years of age but at least sixteen
225 years of age: *Provided*, That the person’s duties may not
226 include the sale or delivery of nonintoxicating beer or
227 alcoholic liquors: *Provided, however*, That the authoriza-
228 tion to employ persons under the age of eighteen years
229 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-25a. Mandatory verification of age of persons purchas- ing alcohol.

- 1 (a) A licensee who:
 - 2 (1) Has installed a transaction scan device in its licensed
3 premises; and
 - 4 (2) Can demonstrate that it requires each employee,
5 servant, or agent to verify the age of any individual to

6 whom liquor is sold, furnished, or given away by the use of
7 the transaction device may not be subject to: (A) Any
8 criminal penalties whatsoever; (B) any administrative
9 penalties from the commissioner; or (C) any civil liability
10 whatsoever for the improper sale, furnishing or giving
11 away of liquor to an individual who is less than twenty-
12 one years of age by one of his or her employees, servants or
13 agents. Any agent, servant or employee who has improp-
14 erly sold, furnished or given away liquor to an individual
15 who is less than twenty-one years of age is subject to the
16 criminal penalties of subsection (b) of this section. Any
17 agent, servant or employee who has improperly sold,
18 furnished or given away liquor to an individual less than
19 twenty-one years of age is subject to termination from
20 employment, and the employer shall have no civil liability
21 for the termination.

22 (b) For purposes of this subsection, a licensee can
23 demonstrate that it requires each employee, servant or
24 agent to verify the age of any individual to whom liquor is
25 sold by providing evidence:

26 (1) That it has developed a written policy which requires
27 each employee, servant or agent to verify the age of each
28 individual to whom liquor will be sold, furnished or given
29 away;

30 (2) That it has communicated this policy to each em-
31 ployee, servant or agent; and

32 (3) That it monitors the actions of its employees, servants
33 or agents regarding the sale, furnishing or giving away of
34 liquor and that it has taken corrective action for any
35 discovered noncompliance with this policy.

36 (c) "Transaction scan" means the process by which a
37 person checks, by means of a transaction scan device, the
38 age and identity of the cardholder, and "transaction scan
39 device" means any commercial device or combination of
40 devices used at a point of sale that is capable of decipher-

41 ing in an electronically readable format the information
42 enclosed on the magnetic strip or bar code of a driver's
43 license or other governmental identity card.

ARTICLE 8. SALE OF WINES.

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

2 (a) For a distributor to sell or deliver wine purchased or
3 acquired from any source other than a person registered
4 under the provisions of section six of this article or for a
5 retailer to sell or deliver wine purchased or acquired from
6 any source other than a licensed distributor or a farm
7 winery as defined in section five-a, article one of this
8 chapter;

9 (b) Unless otherwise specifically provided by the provi-
10 sions of this article, for a licensee under this article to
11 acquire, transport, possess for sale or sell wine other than
12 in the original package;

13 (c) For a licensee, his or her servants, agents or employ-
14 ees to sell, furnish or give wine to any person less than
15 twenty-one years of age, or to a mental incompetent, or
16 person who is physically incapacitated due to the con-
17 sumption of alcoholic liquor or the use of drugs: *Provided*,
18 That the provisions of section twenty-five-a, article three-
19 a of this chapter shall apply to sales of wine;

20 (d) For a licensee to permit a person who is less than
21 eighteen years of age to sell, furnish or give wine to any
22 person;

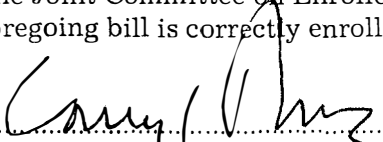
23 (e) For a distributor to sell or deliver any brand of wine
24 purchased or acquired from any source other than the
25 primary source of supply of the wine which granted the
26 distributor the right to sell the brand at wholesale. For the
27 purposes of this article, "primary source of supply" means
28 the vintner of the wine, the importer of a foreign wine who
29 imports the wine into the United States, the owner of a

30 wine at the time it becomes a marketable product, the
31 bottler of a wine or an agent specifically authorized by any
32 of the above-enumerated persons to make a sale of the
33 wine to a West Virginia distributor: *Provided*, That no
34 retailer shall sell or deliver wine purchased or acquired
35 from any source other than a distributor licensed in this
36 state: *Provided, however*, That nothing herein is consid-
37 ered to prohibit sales of convenience between distributors
38 licensed in this state wherein one distributor sells, trans-
39 fers or delivers to another distributor a particular brand or
40 brands for sale at wholesale, of which brand or brands the
41 other distributor may be temporarily out of stock. The
42 commissioner shall promulgate rules necessary to carry
43 out the provision of this subsection;

44 (f) For a person to violate any reasonable rule or regula-
45 tion promulgated by the commissioner under this article;

46 (g) Nothing in this article, nor any rule or regulation of
47 the commissioner, shall prevent or be considered to
48 prohibit any licensee from employing any person who is at
49 least eighteen years of age to serve in any licensee's lawful
50 employment, including the sale or delivery of wine under
51 the provisions of this article. With the prior approval of
52 the commissioner, a licensee whose principal business is
53 the sale of food or consumer goods or the providing of
54 recreational activities, including, but not limited to,
55 nationally franchised fast food outlets, family-oriented
56 restaurants, bowling alleys, drug stores, discount stores,
57 grocery stores, and convenience stores, may employ
58 persons who are less than eighteen years of age but at least
59 sixteen years of age: *Provided*, That the person's duties
60 may not include the sale or delivery of nonintoxicating
61 beer or alcoholic liquors: *Provided, however*, That the
62 authorization to employ persons under the age of eighteen
63 years shall be clearly indicated on the licensee's license.

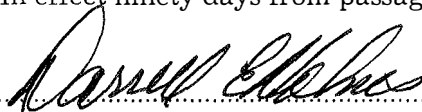
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

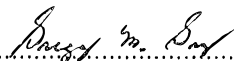

.....
Chairman Senate Committee

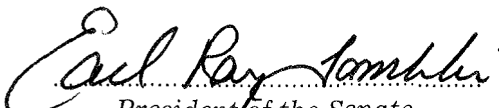

.....
Chairman House Committee


Originated in the Senate.

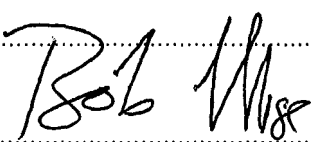
In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2003.

.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3-20-03

Time 9:50 AM