

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3172**

4 (By Delegates Caputo, Pethtel, Williams, D. Poling, Varner,
5 Mahan, Ferro, Shaver, Hamilton and Boggs)

6 (Originating in the Committee on Finance)

7 [February 28, 2011]

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9
10 A BILL to amend and reenact §11-16-4 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §60-2-12 of said
12 code, all relating to the Alcohol Beverage Control Commission;
13 requiring the Division of Personnel review and evaluate the
14 employees of the Alcohol Beverage Control Commission;
15 permitting Alcohol Beverage Control Commission employees to
16 be included in the civil service; providing exemption of
17 inclusion of certain positions; requiring a report to the
18 legislature; and removing out-dated language from the code.

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

20 That §11-16-4 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted; and that §60-2-12 be amended and
22 reenacted; all to read as follows:

23 **CHAPTER 11. TAXATION.**

24 **ARTICLE 16. NONINTOXICATING BEER.**

25 **§11-16-4. Responsibility of Alcohol Beverage Control Commissioner;**
26 **administrators, employees and agents; administration and**

1 **enforcement expenses.**

2 (a) The Alcohol Beverage Control Commissioner described under
3 the provisions of article two, chapter sixty of this code shall
4 have sole responsibility for the administration of this article,
5 except for those responsibilities expressly vested in the Tax
6 Commissioner under sections thirteen, fourteen and fifteen of this
7 article.

8 ~~All acts heretofore performed by the nonintoxicating beer~~
9 ~~commissioner under previous proceedings of this article are hereby~~
10 ~~again ratified and confirmed, and the commissioner shall succeed to~~
11 ~~the same position previously maintained by the nonintoxicating beer~~
12 ~~commissioner in all proceedings and official acts instituted and~~
13 ~~perfected under the provisions of this article prior to the~~
14 ~~effective date of this section.~~

15 (b) The commissioner shall appoint an adequate number of
16 competent persons to serve as administrators, employees and agents
17 of the commissioner for the purpose of keeping all necessary
18 accounts and records required under the provisions of this article;
19 investigating the books, accounts, records and other papers of
20 retailers, distributors and brewers; investigating applicants for
21 license and the places of business of retailers, distributors and
22 brewers; procuring evidence with respect to violations of the
23 provisions of this article, and particularly for use at hearings
24 held by the commissioner and on proceedings instituted in court for
25 the purpose of revoking or suspending licenses hereunder; and such
26 administrators, employees and agents shall perform such other

1 duties as the commissioner may direct. Such administrators,
2 employees and agents shall have the right to enter any licensed
3 premises in the state in the performance of their duties at any
4 hour of the day or night when beer is being sold or consumed on
5 such licensed premises. Refusal by any licensee or by any employee
6 of a licensee to permit such administrators, employees or agents to
7 enter the licensed premises shall be an additional cause for
8 revocation or suspension of the license of such licensee by the
9 commissioner. ~~The compensation of such administrators, employees~~
10 ~~and agents shall be fixed by the commissioner: *Provided, That the*~~
11 ~~commissioner may employ up to eleven special investigators who~~
12 ~~shall be nonclassified exempt employees of the division.~~

13 (c) Services rendered the state by clerks, sheriffs,
14 commissioners in chancery and special commissioners, designated by
15 the court, and court reporters and stenographers performing
16 services for said commissioner and fees of witnesses summoned on
17 behalf of the state in proceedings to revoke or suspend retailer's
18 licenses shall be treated as part of the expenses of administration
19 and enforcement, and such officers and said other persons shall be
20 paid the same fees and charges as would be chargeable for like
21 services performed for an individual; and the compensation of such
22 clerks, sheriffs and other persons shall be paid out of the amount
23 allocated for the expense of administration enforcement, after the
24 amount of such fees and other charges shall be certified by the
25 court to the Auditor.

26 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

1 **ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.**

2 **§60-2-12. Assistants and employees.**

3 (a) The commission shall appoint or employ ~~such assistants and~~
4 ~~employees~~ persons as may be necessary to the efficient operation of
5 the department. ~~and fix their salaries. All assistants and~~
6 ~~employees shall be appointed or employed to serve during the will~~
7 ~~and pleasure of the commission.~~

8 (b) An employee who is in a position that is not part of the
9 classified system may be added to the classified service under the
10 Division of Personnel by July 1, 2012. The Division of Personnel
11 shall review the organization and employment structure of the
12 Alcohol Beverage Control Administration and report to the Joint
13 Committee on Government and Finance before December 31, 2011 with
14 a recommendation as to the process for the transition of such
15 employees.

16 (c) The division shall review and evaluate each employee's
17 job duties and qualifications to determine which classification and
18 compensation is appropriate for that employee.

19 (d) Upon completion of the division's review and evaluation,
20 the employee will be provided with his or her written review and
21 evaluation in a meeting with the staff of the Division of
22 Personnel.

23 (e) The division shall classify the employee in the
24 appropriate classification for the job duties which the employee
25 performs: *Provided, That* the employee's salary or benefits may not
26 be reduced.

1 (f) The commissioner, deputy commissioners and division
2 directors are exempt from the classified service: *Provided, That if*
3 a division director is currently in classified service, that
4 director shall retain his or her classified status.