

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 508**

4 (By Senators Beach, Edgell, Kessler (Acting President) and
5 Klempa)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 23, 2011.]
9 _____

10
11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §60-3A-3a; and to
13 amend and reenact §60-3A-4 of said code, all relating to
14 liquor sampling; authorizing liquor sampling on Class A retail
15 licenses; setting requirements for holding a liquor sampling;
16 creating penalties; authorizing emergency rules or legislative
17 rules; and defining terms.

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

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new section, designated §60-3A-3a; and that
21 §60-3A-4 of said code be amended and reenacted, all to read as
22 follows:

23 **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

24 **§60-3A-3a. Liquor sampling.**

25 (a) Notwithstanding any provision of this code to the

1 contrary, a Class A retail licensee may, with the written approval
2 of the commissioner, conduct a liquor sampling event on a
3 designated sampling day.

4 (b) At least five business days prior to the liquor sampling,
5 the Class A retail licensee shall submit a written proposal to the
6 commissioner requesting to hold a liquor sampling event, including:

7 (1) The day of the event;

8 (2) The location of the event;

9 (3) The times for the event; and

10 (4) The specific brand and flavor of the West Virginia product
11 to be sampled.

12 (c) Upon approval by the commissioner, a Class A retail
13 licensee may serve a complimentary liquor sample of the approved
14 brand and flavor of the West Virginia product that is purchased by
15 the Class A retail licensee from the commissioner.

16 (d) The complimentary liquor samples on any sampling day shall
17 not exceed:

18 (1) One separate and individual sample serving per customer
19 verified to be twenty-one years of age or older; and

20 (2) One ounce in total volume.

21 (e) Servers at the liquor sampling event shall:

22 (1) Be employees of the Class A retail licensee;

23 (2) Be at least twenty-one years of age or older; and

24 (3) Have specific knowledge of the West Virginia product being
25 sampled to convey to the customer.

26 (f) All servers at the liquor sampling event shall verify the

1 age of the customer sampling liquor by requiring and reviewing
2 proper forms of identification. Servers at the liquor sampling
3 event may not serve any person who is:

4 (1) Under the age of twenty-one years; or

5 (2) Intoxicated.

6 (g) A liquor sampling event shall:

7 (1) Occur only inside the Class A retail licensee's licensed
8 premises; and

9 (2) Cease on or before 9:00 p.m. on any approved sampling day.

10 (h) Any liquor bottle used for sampling must be clearly and
11 conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is
12 broken on any liquor bottle or if any liquor bottle is opened, then
13 that liquor bottle must be removed from the licensed premises
14 immediately following the event.

15 (i) Violations of this section are subject to the penalties
16 set forth in this article.

17 (j) To implement the provisions of this section, the
18 commissioner may promulgate emergency rules pursuant to the
19 provisions of section fifteen, article three, chapter twenty-nine-a
20 of this code or propose rules for legislative approval in
21 accordance with the provisions of article three, chapter twenty-
22 nine-a of this code.

23 **§60-3A-4. Definitions.**

24 (a) "Active retail license" means a current license for a
25 retail outlet that has been open and in continuous operation for a
26 period of not less than twelve months prior to July 1, 2010, or

1 July 1 every ten years thereafter.

2 (b) "Active retail licensee" means a person who holds an
3 active retail license at the time of the effective date of the
4 amendments to this section during the first extraordinary session
5 of the Legislature in 2009 or that person's successor or any person
6 who holds an active retail license when it expires at the end of a
7 ten-year period.

8 (c) "Applicant" means any person who elects to pay a purchase
9 option for a Class A retail license, who bids for a retail license
10 or who seeks the commissioner's approval to purchase or otherwise
11 acquire a retail license from a retail licensee, in accordance with
12 the provisions of this article.

13 (d) "Application" means the form prescribed by the
14 commissioner which must be filed with the commissioner by any
15 person bidding for a retail license.

16 (e) "Board" means the Retail Liquor Licensing Board created by
17 this article.

18 (f) "Class A retail license" means a retail license permitting
19 the retail sale of liquor at a freestanding liquor retail outlet.

20 (g) "Class B retail license" means a retail license permitting
21 the sale of liquor at a mixed retail liquor outlet.

22 (h) "Current retail licensee" means a person who holds a
23 retail license at the time of the effective date of the amendments
24 to this section during the first extraordinary session of the
25 Legislature in 2009 or that person's successor or any person who
26 holds a retail license when it expires at the end of a ten-year

1 period.

2 (i) "Designated areas" means one or more geographic areas
3 within a market zone designated as such by the board.

4 (j) "Executive officer" means the president or other principal
5 officer, partner or member of an applicant or retail licensee, any
6 vice president or other principal officer, partner or member of an
7 applicant or retail licensee in charge of a principal business unit
8 or division, or any other officer, partner or member of an
9 applicant or retail licensee who performs a policy-making function.

10 (k) "Freestanding liquor retail outlet" means a retail outlet
11 that sells only liquor, beer, nonintoxicating beer and other
12 alcohol-related products, including tobacco related products.

13 (l) "Liquor" means alcoholic liquor as defined in section
14 five, article one of this chapter and also includes both wine and
15 fortified wines as those terms are defined in section two, article
16 eight of this chapter.

17 (m) "Liquor sampling event" means an event approved by the
18 commissioner, for a Class A retail licensee to hold a liquor
19 sampling during which only one specific brand of West Virginia
20 product may be sampled per day, per customer, twenty-one years of
21 age or older, as set out in section three-a of this article.

22 ~~(m)~~ (n) "Market zone" means a geographic area designated as
23 such by the board for the purpose of issuing retail licenses.

24 ~~(n)~~ (o) "Mixed retail liquor outlet" means a retail outlet
25 that sells liquor, beer, nonintoxicating beer and other alcohol-
26 related products, including tobacco-related products, in addition

1 to convenience and other retail products.

2 ~~(o)~~ (p) "Person" means an individual, firm, corporation,
3 association, partnership, limited partnership, limited liability
4 company or other entity, regardless of its form, structure or
5 nature.

6 ~~(p)~~ (q) "Retail license" means a license issued under the
7 provisions of this article permitting the sale of liquor at retail.

8 ~~(q)~~ (r) "Retail licensee" means the holder of a retail
9 license.

10 ~~(r)~~ (s) "Retail outlet" means a specific location where liquor
11 may be lawfully sold by a retail licensee under the provisions of
12 this article.

13 (t) "Sampling day" means any day of the week where retail
14 licensees may sell liquor pursuant to section eighteen, article
15 three-a, chapter sixty of this code, and is approved, in writing,
16 by the commissioner for a Class A retail licensee to conduct a
17 liquor sampling event.

18 (u) "West Virginia product" means all bourbon, brandy, cognac,
19 cordials, gin, grain alcohol, rye, rum, scotch, tequila, vermouth,
20 vodka, whiskey, apertifs, premixed cocktails, fortified wines,
21 spirit blends, marsala, sake, sherry and any other liquor types and
22 classes as approved by the commissioner and maintained on the ABCA
23 retail liquor product list.

(NOTE: The purpose of this bill is to allow Class A retail

licenses (as defined in chapter 60, Article 3A, section 4) or freestanding liquor retail outlets the ability to conduct responsible liquor sampling events on days of the week, other than Sunday. Violators of these sections are subject to civil and criminal penalties imposed by article 3A.

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

§60-3A-3a is new; therefore, strike-throughs and underscoring have been omitted.)