

**Senate Bill No. 590**

(By Senators Beach, Kessler (Mr. President), Edgell, Tucker and  
Williams)

[Introduced March 21, 2013; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §11-16-18 of the Code of West Virginia,  
1931, as amended; to amend and reenact §60-3A-17, §60-3A-18  
and §60-3A-25 of said code; to amend and reenact §60-7-12 of  
said code; and to amend and reenact §60-8-34 of said code, all  
relating to the sale of certain beer, wine and liquor;  
increasing the percentage of cost that a liquor retail  
licensee may charge; removing provisions relating to the sale  
of certain alcoholic products on certain days; and addressing  
days and hours of operation for certain licensees and private  
clubs.

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

That §11-16-18 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted; that §60-3A-17, §60-3A-18 and §60-3A-25  
of said code be amended and reenacted; that §60-7-12 of said code

1 be amended and reenacted; and that §60-8-34 of said code be amended  
2 and reenacted, all to read as follows:

3 **CHAPTER 11. TAXATION.**

4 **ARTICLE 16. NONINTOXICATING BEER.**

5 **§11-16-18. Unlawful acts of licensees; criminal penalties.**

6 (a) It ~~shall be~~ is unlawful:

7 (1) For any licensee, his, her, its or their servants, agents  
8 or employees to sell, give or dispense, or any individual to drink  
9 or consume, in or on any licensed premises or in any rooms directly  
10 connected therewith, nonintoxicating beer or cooler on weekdays  
11 between the hours of two o'clock a.m. and seven o'clock a.m., or  
12 between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ nine  
13 o'clock a.m., on any Sunday, except in private clubs licensed under  
14 the provisions of article seven, chapter sixty of this code, where  
15 the hours shall conform with the hours of sale of alcoholic  
16 liquors;

17 (2) For any licensee, his, her, its or their servants, agents  
18 or employees to sell, furnish or give any nonintoxicating beer as  
19 defined in this article to any person visibly or noticeably  
20 intoxicated or to any person known to be insane or known to be a  
21 habitual drunkard;

22 (3) For any licensee, his, her its or their servants, agents  
23 or employees to sell, furnish or give any nonintoxicating beer as

1 defined in this article to any person who is less than twenty-one  
2 years of age;

3       (4) For any distributor to sell or offer to sell, or any  
4 retailer to purchase or receive, any nonintoxicating beer as  
5 defined in this article, except for cash and no right of action  
6 ~~shall exist~~ exists to collect any claims for credit extended  
7 contrary to the provisions of this subdivision. Nothing herein  
8 contained ~~shall prohibit~~ prohibits a licensee from crediting to a  
9 purchaser the actual price charged for packages or containers  
10 returned by the original purchaser as a credit on any sale, or from  
11 refunding to any purchaser the amount paid or deposited for the  
12 containers when title is retained by the vendor: *Provided*, That a  
13 distributor may accept an electronic transfer of funds if the  
14 transfer of funds is initiated by an irrevocable payment order on  
15 the invoiced amount for the nonintoxicating beer. The cost of the  
16 electronic fund transfer shall be borne by the retailer and the  
17 distributor must initiate the transfer no later than noon of one  
18 business day after the delivery;

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

22       (6) For any brewer or distributor to give, furnish, rent or  
23 sell any equipment, fixtures, signs or supplies directly or

1 indirectly or through a subsidiary or affiliate to any licensee  
2 engaged in selling products of the brewing industry at retail or to  
3 offer any prize, premium, gift or other similar inducement, except  
4 advertising matter of nominal value, to either trade or consumer  
5 buyers: *Provided*, That a distributor may offer, for sale or rent,  
6 tanks of carbonic gas. Nothing herein contained ~~shall prohibit~~  
7 prohibits a brewer from sponsoring any professional or amateur  
8 athletic event or from providing prizes or awards for participants  
9 and winners in any events: *Provided, however*, That no event ~~shall~~  
10 may be sponsored which permits actual participation by athletes or  
11 other persons who are minors, unless specifically authorized by the  
12 commissioner;

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

15 (8) For any licensee except the holder of a license to operate  
16 a private club issued under the provisions of article seven,  
17 chapter sixty of this code or a holder of a license or a private  
18 wine restaurant issued under the provisions of article eight of  
19 said chapter to possess a federal license, tax receipt or other  
20 permit entitling, authorizing or allowing the licensee to sell  
21 liquor or alcoholic drinks other than nonintoxicating beer;

22 (9) For any licensee to obstruct the view of the interior of  
23 his or her premises by enclosure, lattice, drapes or any means

1 which would prevent plain view of the patrons occupying the  
2 premises. The interior of all licensed premises shall be  
3 adequately lighted at all times: *Provided*, That provisions of this  
4 subdivision do not apply to the premises of a Class B retailer, the  
5 premises of a private club licensed under the provisions of article  
6 seven, chapter sixty of this code or the premises of a private wine  
7 restaurant licensed under the provisions of article eight of ~~said~~  
8 that chapter;

9 (10) For any licensee to manufacture, import, sell, trade,  
10 barter, possess or acquiesce in the sale, possession or consumption  
11 of any alcoholic liquors on the premises covered by a license or on  
12 premises directly or indirectly used in connection therewith:  
13 *Provided*, That the prohibition contained in this subdivision with  
14 respect to the selling or possessing or to the acquiescence in the  
15 sale, possession or consumption of alcoholic liquors is not  
16 applicable with respect to the holder of a license to operate a  
17 private club issued under the provisions of article seven, chapter  
18 sixty of this code nor ~~shall~~ is the prohibition ~~be~~ applicable to a  
19 private wine restaurant licensed under the provisions of article  
20 eight of said chapter insofar as the private wine restaurant is  
21 authorized to serve wine;

22 (11) For any retail licensee to sell or dispense  
23 nonintoxicating beer, as defined in this article, purchased or

1 acquired from any source other than a distributor, brewer or  
2 manufacturer licensed under the laws of this state;

3       (12) For any licensee to permit loud, boisterous or disorderly  
4 conduct of any kind upon his or her premises or to permit the use  
5 of loud musical instruments if either or any of the ~~same~~ conduct  
6 may disturb the peace and quietude of the community wherein the  
7 business is located: *Provided*, That no licensee may have in  
8 connection with his or her place of business any loudspeaker  
9 located on the outside of the licensed premises that broadcasts or  
10 carries music of any kind;

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

16       (14) For any distributor to sell, possess for sale, transport  
17 or distribute nonintoxicating beer except in the original  
18 container;

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

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

1           (17) For any Class A licensee, his, her, its or their  
2 servants, agents or employees, or for any licensee by or through  
3 any servants, agents or employees, to allow, suffer or permit any  
4 person less than eighteen years of age to loiter in or upon any  
5 licensed premises; except, however, that the provisions of this  
6 subdivision do not apply where a person under the age of eighteen  
7 years is in or upon the premises in the immediate company of his or  
8 her parent or parents, or where and while a person under the age of  
9 eighteen years is in or upon the premises for the purpose of and  
10 actually making a lawful purchase of any items or commodities  
11 therein sold, or for the purchase of and actually receiving any  
12 lawful service therein rendered, including the consumption of any  
13 item of food, drink or soft drink therein lawfully prepared and  
14 served or sold for consumption on the premises;

15           (18) For any distributor to sell, offer for sale, distribute  
16 or deliver any nonintoxicating beer outside the territory assigned  
17 to any distributor by the brewer or manufacturer of nonintoxicating  
18 beer or to sell, offer for sale, distribute or deliver  
19 nonintoxicating beer to any retailer whose principal place of  
20 business or licensed premises is within the assigned territory of  
21 another distributor of ~~such~~ nonintoxicating beer: *Provided*, That  
22 nothing herein is considered to prohibit sales of convenience  
23 between distributors licensed in this state wherein one distributor

1 sells, transfers or delivers to another distributor a particular  
2 brand or brands for sale at wholesale; and

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

7       (b) Any person who violates any provision of this article  
8 including, but not limited to, any provision of this section, or  
9 any rule, or order lawfully promulgated by the commissioner, or who  
10 makes any false statement concerning any material fact in  
11 submitting application for license or for a renewal of a license or  
12 in any hearing concerning the revocation thereof, or who commits  
13 any of the acts herein declared to be unlawful is guilty of a  
14 misdemeanor and, upon conviction thereof, shall be punished for  
15 each offense by a fine of not less than twenty-five nor more than  
16 \$500, or confined in ~~the county or regional~~ jail for not less than  
17 thirty days nor more than six months, or ~~by both fine and~~  
18 ~~confinement~~ fined and confined. Magistrates ~~shall~~ have concurrent  
19 jurisdiction with the circuit court and any other courts having  
20 criminal jurisdiction in their county for the trial of all  
21 misdemeanors arising under this article.

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

23       (A) Has installed a transaction scan device on its licensed



1 premises; and

2       (B) Can demonstrate that it requires each employee, servant or  
3 agent to verify the age of any individual to whom nonintoxicating  
4 beer is sold, furnished or given away by the use of the transaction  
5 device may not be subject to:   (i) Any criminal penalties  
6 whatsoever, including those set forth in subsection (b) of this  
7 section; (ii) any administrative penalties from the commissioner;  
8 or (iii) any civil liability whatsoever for the improper sale,  
9 furnishing or giving away of nonintoxicating beer to an individual  
10 who is less than twenty-one years of age by one of his or her  
11 employees, servants or agents. Any agent, servant or employee who  
12 has improperly sold, furnished or given away nonintoxicating beer  
13 to an individual less than twenty-one years of age is subject to  
14 the criminal penalties of subsection (b) of this section. Any  
15 agent, servant or employee who has improperly sold, furnished or  
16 given away nonintoxicating beer to an individual less than  
17 twenty-one years of age is subject to termination from employment,  
18 and the employer ~~shall have~~ has no civil liability for the  
19 termination.

20       (2) For purposes of this section, a Class B licensee can  
21 demonstrate that it requires each employee, servant or agent to  
22 verify the age of any individual to whom nonintoxicating beer is  
23 sold by providing evidence:   (A) That it has developed a written

1 policy which requires each employee, servant or agent to verify the  
2 age of each individual to whom nonintoxicating beer will be sold,  
3 furnished or given away; (B) that it has communicated this policy  
4 to each employee, servant or agent; and (C) that it monitors the  
5 actions of its employees, servants or agents regarding the sale,  
6 furnishing or giving away of nonintoxicating beer and that it has  
7 taken corrective action for any discovered noncompliance with this  
8 policy.

9 (3) "Transaction scan" means the process by which a person  
10 checks, by means of a transaction scan device, the age and identity  
11 of the cardholder, and "transaction scan device" means any  
12 commercial device or combination of devices used at a point of sale  
13 that is capable of deciphering in an electronically readable format  
14 the information enclosed on the magnetic strip or bar code of a  
15 driver's license or other governmental identity card.

16 (d) Nothing in this article nor any rule or regulation of the  
17 commissioner ~~shall prevents or be considered to prohibit~~ prohibits  
18 any licensee from employing any person who is at least eighteen  
19 years of age to serve in the licensee's lawful employ, including  
20 the sale or delivery of nonintoxicating beer as defined in this  
21 article. With the prior approval of the commissioner, a licensee  
22 whose principal business is the sale of food or consumer goods or  
23 the providing of recreational activities, including, but not

1 limited to, nationally franchised fast food outlets,  
2 family-oriented restaurants, bowling alleys, drug stores, discount  
3 stores, grocery stores and convenience stores, may employ persons  
4 who are less than eighteen years of age but at least sixteen years  
5 of age: *Provided*, That the person's duties may not include the  
6 sale or delivery of nonintoxicating beer or alcoholic liquors:  
7 *Provided, however*, That the authorization to employ persons under  
8 the age of eighteen years shall be clearly indicated on the  
9 licensee's license.

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

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

12 **§60-3A-17. Wholesale prices set by commissioner; retail licensees**  
13           **to purchase liquor from state; transportation and**  
14           **storage; method of payment.**

15           (a) The commissioner shall fix wholesale prices for the sale  
16 of liquor, other than wine, to retail licensees. The commissioner  
17 shall sell liquor, other than wine, to retail licensees according  
18 to a uniform pricing schedule. The commissioner shall obtain if  
19 possible, upon request, any liquor requested by a retail licensee.

20           (b) Wholesale prices shall be established in order to yield a  
21 net profit for the General Fund of not less than \$6,500,000  
22 annually on an annual volume of business equal to the average for

1 the past three years. The net revenue derived from the sale of  
2 alcoholic liquors shall be deposited into the General Revenue Fund  
3 in the manner provided in section seventeen, article three of this  
4 chapter.

5 (c) The commissioner shall specify the maximum wholesale  
6 markup percentage which may be applied to the prices paid by the  
7 commissioner for all liquor, other than wine, in order to determine  
8 the prices at which all liquor, other than wine, will be sold to  
9 retail licensees. A retail licensee shall purchase all liquor,  
10 other than wine, for resale in this state only from the  
11 commissioner, and the provisions of sections twelve and thirteen,  
12 article six of this chapter shall not apply to the transportation  
13 of the liquor: *Provided*, That a retail licensee shall purchase  
14 wine from a wine distributor who is duly licensed under article  
15 eight of this chapter. All liquor, other than wine, purchased by  
16 retail licensees shall be stored in the state at the retail outlet  
17 or outlets operated by the retail licensee: *Provided, however*,  
18 That the commissioner, in his or her discretion, may upon written  
19 request permit a retail licensee to store liquor at a site other  
20 than the retail outlet or outlets.

21 (d) The sale of liquor by the commissioner to retail licensees  
22 shall be paid by electronic funds transfer which shall be initiated  
23 by the commissioner on the business day following the retail

1 licensees order or by money order, certified check or cashier's  
2 check which shall be received by the commissioner at least  
3 twenty-four hours prior to the shipping of the alcoholic liquors:  
4 *Provided*, That if a retail licensee posts with the commissioner an  
5 irrevocable letter of credit or bond with surety acceptable to the  
6 commissioner from a financial institution acceptable to the  
7 commissioner guaranteeing payment of checks, then the commissioner  
8 may accept the retail licensee's checks in an amount up to the  
9 amount of the letter of credit.

10 (e) (1) A retail licensee may not sell liquor to persons  
11 licensed under the provisions of article seven of this chapter at  
12 less than ~~one hundred ten percent~~ one hundred twenty percent of the  
13 retail licensee's cost as defined in section six, article eleven-a,  
14 chapter forty-seven of this code.

15 (2) A retail licensee may not sell liquor to the general  
16 public at less than ~~one hundred ten percent~~ one hundred twenty  
17 percent of the retail licensee's cost as defined in section six,  
18 article eleven-a, chapter forty-seven of this code.

19 **§60-3A-18. Days and hours retail licensees may sell liquor.**

20 Retail licensees may not sell liquor ~~on Sundays and on~~  
21 Christmas day, or between the hours of twelve midnight and eight  
22 o'clock a.m., except that wine and fortified wines may be sold ~~on~~  
23 ~~those days and~~ at such times as authorized in section thirty-four,

1 article eight of this chapter.

2 **§60-3A-25. Certain acts of retail licensees prohibited; criminal**  
3 **penalties.**

4 (a) It is unlawful for any retail licensee, or agent or  
5 employee thereof, on such retail licensee's premises to:

6 (1) Sell or offer for sale any liquor other than from the  
7 original package or container;

8 (2) Sell, give away, or permit the sale of, gift of, or the  
9 procurement of, any liquor, for or to any person under twenty-one  
10 years of age;

11 (3) Sell, give away, or permit the sale of, gift of, or the  
12 procurement of, any liquor, for or to any person visibly  
13 intoxicated;

14 (4) Sell or offer for sale any liquor ~~on any Sunday or~~ other  
15 than during the hours permitted for the sale of liquor by retail  
16 licensees as provided under this article;

17 (5) Permit the consumption by any person of any liquor;

18 (6) With the intent to defraud, alter, change or misrepresent  
19 the quality, quantity or brand name of any liquor;

20 (7) Permit any person under eighteen years of age to sell,  
21 furnish or give liquor to any other person;

22 (8) Purchase or otherwise obtain liquor in any manner or from  
23 any source other than that specifically authorized in this article;

1 or

2 (9) Permit any person to break the seal on any package or  
3 bottle of liquor.

4 (b) Any person who violates any provision of this article,  
5 except section twenty-four of this article, including, but not  
6 limited to, any provision of this section, or any rule promulgated  
7 by the board or the commissioner, or who makes any false statement  
8 concerning any material fact, or who omits any material fact with  
9 intent to deceive, in submitting an application for a retail  
10 license or for a renewal of a retail license or in any hearing  
11 concerning the suspension or revocation thereof, or who commits any  
12 of the acts declared in this article to be unlawful, is guilty of  
13 a misdemeanor and, shall, upon conviction thereof, for each offense  
14 be fined not less than \$100 or more than \$5,000, or ~~imprisoned in~~  
15 ~~the county~~ confined in jail for not less than thirty days nor more  
16 than one year, or both fined and ~~imprisoned~~ confined. Magistrates  
17 have concurrent jurisdiction with the circuit courts for offenses  
18 under this article.

19 (c) Nothing in this article, or any rule of the board or  
20 commissioner, prevents or prohibits any retail licensee from  
21 employing any person who is at least eighteen years of age to serve  
22 in any retail licensee's lawful employment at any retail outlet  
23 operated by such retail licensee, or from having ~~such~~ that person

1 sell or deliver liquor under the provisions of this article. With  
2 the prior approval of the commissioner, a retail licensee may  
3 employ persons at any retail outlet operated by such retail  
4 licensee who are less than eighteen years of age but at least  
5 sixteen years of age, but ~~such~~ those persons' duties ~~shall~~ may not  
6 include the sale or delivery of liquor: *Provided*, That the  
7 authorization to employ ~~such~~ persons under the age of eighteen  
8 years shall be clearly indicated on the retail license issued to  
9 any such retail licensee.

10 **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

11 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

12 (a) It is unlawful for any licensee, or agent, employee or  
13 member thereof, on such licensee's premises to:

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

16 (2) Authorize or permit any disturbance of the peace; obscene,  
17 lewd, immoral or improper entertainment, conduct or practice,  
18 gambling or any slot machine, multiple coin console machine,  
19 multiple coin console slot machine or device in the nature of a  
20 slot machine;

21 (3) Sell, give away or permit the sale of, gift to or the  
22 procurement of any nonintoxicating beer, wine or alcoholic liquors  
23 for or to, or permit the consumption of nonintoxicating beer, wine



1 or alcoholic liquors on the licensee's premises, by any person less  
2 than twenty-one years of age;

3 (4) Sell, give away or permit the sale of, gift to or the  
4 procurement of any nonintoxicating beer, wine or alcoholic liquors,  
5 for or to any person known to be deemed legally incompetent, or for  
6 or to any person who is physically incapacitated due to consumption  
7 of nonintoxicating beer, wine or alcoholic liquor or the use of  
8 drugs;

9 (5) Sell, give or dispense nonintoxicating beer, wine or  
10 alcoholic liquors in or on any licensed premises or in any rooms  
11 directly connected therewith, between the hours of three o'clock  
12 a.m. and ~~one o'clock p.m.~~ nine o'clock a.m. on any Sunday;

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

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

19 (8) Sell or offer for sale any alcoholic liquor to any person  
20 who is not a duly elected or approved dues paying member in good  
21 standing of ~~said~~ the private club or a guest of ~~such~~ the member;

22 (9) Sell, offer for sale, give away, facilitate the use of or  
23 allow the use of carbon dioxide, cyclopropane, ethylene, helium or

1 nitrous oxide for purposes of human consumption except as  
2 authorized by the commissioner;

3 (10) (A) Employ any person who is less than eighteen years of  
4 age in a position where the primary responsibility for ~~such~~  
5 employment is to sell, furnish or give nonintoxicating beer, wine  
6 or alcoholic liquors to any person;

7 (B) Employ any person who is between the ages of eighteen and  
8 twenty-one who is not directly supervised by a person aged  
9 twenty-one or over in a position where the primary responsibility  
10 for such employment is to sell, furnish or give nonintoxicating  
11 beer, wine or alcoholic liquors to any person; or

12 (11) Violate any reasonable rule of the commissioner.

13 (b) It is unlawful for any licensee to advertise in any news  
14 media or other means, outside of the licensee's premises, the fact  
15 that alcoholic liquors may be purchased ~~thereat~~ on the premises.

16 (c) Any person who violates any of the foregoing provisions is  
17 guilty of a misdemeanor and, upon conviction thereof, shall be  
18 fined not less than \$500 nor more than \$1,000, or ~~imprisoned in the~~  
19 ~~county~~ confined in jail for a period not to exceed one year, or  
20 both fined and ~~imprisoned~~ confined.

21 **ARTICLE 8. SALE OF WINES.**

22 **§60-8-34. When retail sales prohibited.**

23 It ~~shall be~~ is unlawful for a retailer, farm winery, wine

1 specialty shop retailer, private wine bed and breakfast, private  
2 wine restaurant or private wine spa licensee, his or her servants,  
3 agents or employees to sell or deliver wine between the hours of  
4 two o'clock a.m. and ~~one o'clock p.m.~~ nine o'clock a.m. on Sundays,  
5 or between the hours of two o'clock a.m. and seven o'clock a.m. on  
6 weekdays and Saturdays.

NOTE: The purpose of this bill is to remove prohibition era liquor laws addressing the sale of alcohol on Sundays, to adjust the minimum wholesale percentage for sales of liquor by retail outlets to private clubs, and permit private clubs to sell alcoholic liquors during brunch hours on Sunday starting at 9 a.m.

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