

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 498

(SENATOR PALUMBO, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; TO TAKE EFFECT JULY 1, 2013.]

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(SENATOR PALUMBO, *original sponsor*)

[Passed April 13, 2013; to take effect July 1, 2013.]

AN ACT to amend and reenact §11-16-24 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-28 of said code; to amend and reenact §60-7-13a of said code; and to amend and reenact §60-8-18 of said code, all relating to hearing and appeal procedures for certain licenses issued by the Alcohol Beverage Control Administration; requiring that appeals from commissioner's decision to refuse to issue or renew certain licenses be brought in the circuit court of Kanawha County or the circuit court in the county where the licensed premises is proposed to be located or conduct sales; requiring that appeals from the commissioner's decision regarding disciplinary action against a licensee are to be brought in the circuit court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located or does conduct sales; and providing that the licensee appealing the commissioner's decision is required to pay the costs and fees incident to transcribing, certifying and transmitting records pertaining to the appeal.

Be it enacted by the Legislature of West Virginia:

That §11-16-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3A-28 of said code be amended and reenacted; that §60-7-13a of said code be amended and reenacted; and that §60-8-18 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

1 (a) The commissioner may not revoke or suspend a
2 license issued pursuant to this article or impose a civil penalty
3 authorized under this article unless and until a hearing is held
4 after at least ten days' notice to the licensee of the time and
5 place of the hearing, which notice shall contain a statement
6 or specification of the charges, grounds or reasons for the
7 proposed contemplated action, and which is served upon the
8 licensee as notices under the West Virginia Rules of Civil
9 Procedure or by certified mail, return receipt requested, to the
10 address for which license was issued; at which time and
11 place, so designated in the notice, the licensee has the right to
12 appear and produce evidence in his or her behalf, and to be
13 represented by counsel.

14 (b) The commissioner may summon witnesses in the
15 hearings before him or her, and fees of witnesses summoned
16 on behalf of the state in proceedings to sanction licenses shall
17 be treated as a part of the expenses of administration and

18 enforcement. The fees shall be the same as those in similar
19 hearings in the circuit courts of this state. The commissioner
20 may, upon a finding of violation, assess a licensee a sum not
21 to exceed \$150 per violation to reimburse the commissioner
22 for expenditures for witness fees, court reporter fees and
23 travel costs incurred in holding the hearing. Moneys so
24 assessed shall be transferred to the Nonintoxicating Beer
25 Fund created by section twenty-three of this article.

26 (c) If, at the request of the licensee or on his or her
27 motion, the hearing is continued and does not take place on
28 the day fixed by the commissioner in the notice of hearing,
29 then the licensee's license may be suspended until the hearing
30 and decision of the commissioner, and in the event of
31 revocation or suspension of the license, upon hearing before
32 the commissioner, the licensee is not permitted to sell beer
33 pending an appeal as provided by this article. Any person
34 continuing to sell beer after his or her license has been
35 suspended or revoked, as hereinbefore provided, is guilty of
36 a misdemeanor and, shall be punished as provided in section
37 nineteen of this article.

38 (d) Notwithstanding the provisions of subsection (b),
39 section four, article five, chapter twenty-nine-a of this code,
40 the action of the commissioner in revoking, suspending,
41 sanctioning or refusing a license is subject to review by the
42 circuit court of Kanawha County or the circuit court in the
43 county where the proposed or licensed premises is located
44 and will or does conduct sales: *Provided*, That in all other
45 respects, such review shall be conducted in the manner
46 provided in chapter twenty-nine-a of this code. The petition
47 for review must be filed with the circuit court within thirty
48 days following entry of the final order of revocation,
49 suspension, sanction or refusal issued by the commissioner.
50 An applicant or licensee obtaining an order for review is
51 required to pay the costs and fees incident to transcribing,
52 certifying and transmitting the records pertaining to the

53 matter to the circuit court. An application to the Supreme
54 Court of Appeals of West Virginia for a writ of error from
55 any final order of the circuit court in the matter shall be made
56 within thirty days from and after the entry of the final circuit
57 court order.

58 (e) All hearings, upon notice to show cause why license
59 should be revoked, suspended, sanctioned or refused, before
60 the commissioner shall be held in the offices of the
61 commissioner in Charleston, Kanawha County, unless
62 otherwise provided by the commissioner in the notice of
63 hearing. When the hearing is held elsewhere than in the
64 commissioner's office, the licensee may be required to make
65 deposits of the estimated costs of the hearing.

66 (f) Whenever a licensee has been convicted of an offense
67 constituting a violation of the laws of this state or of the
68 United States relating to nonintoxicating beer, or alcoholic
69 liquor, and the conviction has become final, the clerk of the
70 court in which the licensee has been convicted shall forward
71 to the commissioner a certified copy of the order or judgment
72 of conviction if the clerk has knowledge that the person so
73 convicted is a licensee, together with the certification of the
74 clerk that the conviction is final.

75 (g) In the case of a Class B licensee with multiple
76 licensed locations, the commissioner may, in his or her
77 discretion, revoke, suspend or otherwise sanction, per the
78 provisions of section twenty-three of this article, only the
79 license for the location or locations involved in the unlawful
80 conduct for which licensure is sanctioned, as opposed to all
81 separately licensed locations of the licensee.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-28. Notice of and hearing on revocation; right of appeal; appeal procedures.

1 (a) Before a retail license issued under the authority of
2 this article is suspended for a period of more than twenty
3 days, or revoked, the commissioner shall give at least ten
4 days' notice to the retail licensee. Notice shall be in writing,
5 shall state the reason for suspension or revocation, and shall
6 designate a time and place for a hearing where the retail
7 licensee may show cause why the retail license should not be
8 suspended or revoked. Notice shall be sent by certified mail
9 to the address for which the retail license was issued. The
10 retail licensee may, at the time designated for the hearing,
11 produce evidence in his or her behalf and be represented by
12 counsel.

13 (b) The hearing and the administrative procedures prior
14 to, during and following the hearing are governed by and
15 shall be conducted in accordance with the provisions of
16 article five, chapter twenty-nine-a of this code in like manner
17 as if the provisions of article five were fully set forth in this
18 section.

19 (c) Notwithstanding the provisions of subsection (b),
20 section four, article five, chapter twenty-nine-a of this code,
21 any person adversely affected by a final order entered
22 following the hearing has the right of judicial review by the
23 circuit court of Kanawha County or the circuit court in the
24 county where the proposed or licensed premises is located
25 and will or does conduct sales: *Provided*, That in all other
26 respects, such review shall be conducted in the manner
27 provided in chapter twenty-nine-a of this code. The petition
28 for the review must be filed with the circuit court within
29 thirty days following entry of the final order issued by the
30 commissioner. An applicant or licensee obtaining the review
31 is required to pay the costs and fees incident to transcribing,

32 certifying and transmitting the records pertaining to the
33 matter to circuit court.

34 (d) The judgment of the circuit court reviewing the order
35 of the commissioner is final unless reversed, vacated or
36 modified on appeal to the Supreme Court of Appeals in
37 accordance with the provisions of section one, article six,
38 chapter twenty-nine-a of this code.

39 (e) Legal counsel and services for the commissioner in all
40 the proceedings in any circuit court and the Supreme Court of
41 Appeals shall be provided by the Attorney General or his or
42 her assistants and in any proceedings in any circuit court by
43 the prosecuting attorney of that county as well, all without
44 additional compensation.

45 (f) Upon final revocation, the commissioner shall proceed
46 to reissue the retail license by following the procedures set
47 forth herein for the initial issuance of a retail license.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-13a. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

1 (a) The commissioner may not revoke or suspend a
2 license issued pursuant to this article or impose civil penalties
3 authorized under this article unless and until a hearing is held
4 after at least ten days' notice to the licensee of the time and
5 place of the hearing, which notice shall contain a statement
6 or specification of the charges, grounds or reasons for the

7 proposed contemplated action, and which is served upon the
8 licensee as notices under the West Virginia Rules of Civil
9 Procedure or by certified mail, return receipt requested, to the
10 address for which license was issued. At the time and place,
11 designated in the notice, the licensee has the right to appear
12 and produce evidence in his or her behalf, and to be
13 represented by counsel: *Provided*, That the commissioner
14 may forthwith suspend the license when the commissioner
15 believes the public safety will be adversely affected by the
16 licensee's continued operation.

17 (b) The commissioner may summon witnesses in the
18 hearing before him or her, and fees of witnesses summoned
19 on behalf of the state in proceedings to sanction licenses shall
20 be treated as a part of the expenses of administration and
21 enforcement. The fees shall be the same as those in similar
22 hearings in the circuit courts of this state. The commissioner
23 may, upon a finding of violation, assess a licensee a sum, not
24 to exceed \$150 per violation, to reimburse the commissioner
25 for expenditures of witness fees, court reporter fees and travel
26 costs incurred in holding the hearing. Moneys so assessed
27 shall be transferred to the Alcohol Beverage Control
28 Enforcement Fund created by section thirteen of this article.

29 (c) If, at the request of the licensee or on his or her
30 motion, the hearing is continued and does not take place on
31 the day fixed by the commissioner in the notice of hearing,
32 then the licensee's license may be suspended until the hearing
33 and decision of the commissioner, and in the event of
34 revocation or suspension of the license, upon hearing before
35 the commissioner, the licensee is not permitted to sell
36 alcoholic liquor or nonintoxicating beer pending an appeal as
37 provided by this article. Any person continuing to sell
38 alcoholic liquor or nonintoxicating beer after his or her
39 license has been suspended or revoked, as provided in this
40 section, is guilty of a misdemeanor and, shall be punished as
41 provided in section twelve of this article.

42 (d) Notwithstanding the provisions of subsection (b),
43 section four, article five, chapter twenty-nine-a of this code,
44 the action of the commissioner in revoking, suspending,
45 sanctioning or refusing a license is subject to review by the
46 circuit court of Kanawha County or the circuit court in the
47 county where the proposed or licensed premises is located
48 and will or does conduct sales: *Provided*, That in all other
49 respects, such review shall be conducted in the manner
50 provided in chapter twenty-nine-a of this code. The petition
51 for review must be filed with the circuit court within thirty
52 days following entry of the final order of revocation,
53 suspension, sanction or refusal issued by the commissioner.
54 A licensee obtaining an order for the review is required to
55 pay the costs and fees incident to transcribing, certifying and
56 transmitting the records pertaining to the matter to the circuit
57 court. An application to the Supreme Court of Appeals of
58 West Virginia for a writ of error from any final order of the
59 circuit court in the matter shall be made within thirty days
60 from and after the entry of the final circuit court order.

61 (e) All such hearings, upon notice to show cause why
62 license should be revoked, suspended, sanctioned or refused,
63 before the commissioner shall be held in the offices of the
64 commissioner in Charleston, Kanawha County, unless
65 otherwise provided by the commissioner in the notice of
66 hearing. When the hearing is held elsewhere than in the
67 commissioner's office, the licensee may be required to make
68 deposits of the estimated costs of the hearing.

69 (f) Whenever any licensee has been convicted of an
70 offense constituting a violation of the laws of this state or of
71 the United States relating to alcoholic liquor, or
72 nonintoxicating beer, and the conviction has become final,
73 the clerk of the court in which the licensee has been
74 convicted shall forward to the commissioner a certified copy
75 of the order or judgment of conviction if the clerk has
76 knowledge that the person convicted is a licensee, together

77 with the certification of the clerk that the conviction is final.
78 The commissioner shall report violations of any of the
79 provisions of section twelve or twelve-a of this article to the
80 prosecuting attorney of the county in which the licensed
81 premises is located.

ARTICLE 8. SALE OF WINES.

§60-8-18. Revocation, suspension and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

1 (a) The commissioner may on his or her own motion, or
2 shall on the sworn complaint of any person, conduct an
3 investigation to determine if any provisions of this article or
4 any rule promulgated or any order issued by the
5 commissioner has been violated by any licensee. After
6 investigation, the commissioner may impose penalties and
7 sanctions as set forth below.

8 (1) If the commissioner finds that the licensee has
9 violated any provision of this article or any rule promulgated
10 or order issued by the commissioner, or if the commissioner
11 finds the existence of any ground on which a license could
12 have been refused, if the licensee were then applying for a
13 license, the commissioner may:

14 (A) Revoke the licensee's license;

15 (B) Suspend the licensee's license for a period
16 determined by the commissioner not to exceed twelve
17 months; or

18 (C) Place the licensee on probation for a period not to
19 exceed twelve months; and

20 (D) Impose a monetary penalty not to exceed \$1,000 for
21 each violation where revocation is not imposed.

22 (2) If the commissioner finds that a licensee has willfully
23 violated any provision of this article or any rule promulgated
24 or any order issued by the commissioner, the commissioner
25 shall revoke the licensee's license.

26 (b) If a supplier or distributor fails or refuses to keep in
27 effect the bond required by section twenty-nine of this article,
28 the commissioner shall automatically suspend the supplier or
29 distributor's license until the bond required by section twenty
30 of this article is furnished to the commissioner, at which time
31 the commissioner shall vacate the suspension.

32 (c) Whenever the commissioner refuses to issue a license,
33 or suspends or revokes a license, places a licensee on
34 probation or imposes a monetary penalty, he or she shall
35 enter an order to that effect and cause a copy of the order to
36 be served in person or by certified mail, return receipt
37 requested, on the licensee or applicant.

38 (d) An applicant or licensee, as the case may be,
39 adversely affected by the order has a right to a hearing before
40 the commissioner if a written demand for hearing is served
41 upon the commissioner within ten days following the receipt
42 of the commissioner's order by the applicant or licensee.
43 Timely service of a demand for a hearing upon the
44 commissioner operates to suspend the execution of the order
45 with respect to which a hearing has been demanded, except
46 an order suspending a license under the provisions of
47 subsection (b) of this section. The person demanding a
48 hearing shall give security for the cost of the hearing in a
49 form and amount as the commissioner may reasonably
50 require. If the person demanding the hearing does not
51 substantially prevail in the hearing or upon judicial review
52 thereof as provided in subsections (g) and (h) of this section,

53 then the costs of the hearing shall be assessed against him or
54 her by the commissioner and may be collected by an action
55 at law or other proper remedy.

56 (e) Upon receipt of a timely served written demand for a
57 hearing, the commissioner shall immediately set a date for the
58 hearing and notify the person demanding the hearing of the
59 date, time and place of the hearing, which shall be held
60 within thirty days after receipt of the demand. At the hearing
61 the commissioner shall hear evidence and thereafter enter an
62 order supporting by findings of facts, affirming, modifying or
63 vacating the order. Any such order is final unless vacated or
64 modified upon judicial review thereof.

65 (f) The hearing and the administrative procedure prior to,
66 during and following the hearing shall be governed by and in
67 accordance with the provisions of article five, chapter twenty-
68 nine-a of this code.

69 (g) Notwithstanding the provisions of subsection (b),
70 section four, article five, chapter twenty-nine-a of this code,
71 an applicant or licensee adversely affected by a final order
72 entered following a hearing has the right of judicial review of
73 the order code in the circuit court of Kanawha County or the
74 circuit court in the county where the proposed or licensed
75 premises is located and will or does conduct sales: *Provided*,
76 That in all other respects, such review shall be conducted in
77 the manner provided in chapter twenty-nine-a of this code.
78 The petition for the review must be filed with the circuit court
79 within thirty days following entry of the final order issued by
80 the commissioner. An applicant or licensee obtaining judicial
81 review is required to pay the costs and fees incident to
82 transcribing, certifying and transmitting the records
83 pertaining to the matter to circuit court.

84 (h) The judgment of the circuit court reviewing the order
85 of the commissioner is final unless reversed, vacated or

86 modified on appeal to the Supreme Court of Appeals in
87 accordance with the provisions of section one, article six,
88 chapter twenty-nine-a of this code.

89 (i) Legal counsel and services for the commissioner in all
90 proceedings in any circuit court and the Supreme Court of
91 Appeals shall be provided by the Attorney General or his or
92 her assistants and in any proceedings in any circuit court by
93 the prosecuting attorney of that county as well, all without
94 additional compensation.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2013.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2013.

.....
Governor