

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 498

(By Senator Palumbo)

[Originating in the Committee on the Judiciary;
reported March 28, 2013.]

A BILL 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 procedures for certain licenses issued by the Alcohol Beverage Control Administration; 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 and will 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.

- 1 (a) The commissioner ~~shall~~ may not revoke ~~nor~~ or
- 2 suspend ~~any~~ a license issued pursuant to this article or
- 3 impose ~~any civil penalties~~ a civil penalty authorized ~~thereby~~
- 4 under this article unless and until a hearing ~~shall be~~ is held

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5 after at least ten days' notice to the licensee of the time and
6 place of ~~such~~ the hearing, which notice shall contain a
7 statement or specification of the charges, grounds or reasons
8 for ~~such~~ the proposed contemplated action, and which ~~shall~~
9 ~~be~~ is served upon the licensee as notices under the West
10 Virginia Rules of Civil Procedure or by certified mail, return
11 receipt requested, to the address for which license was
12 issued; at which time and place, so designated in the notice,
13 the licensee ~~shall have~~ has the right to appear and produce
14 evidence in his or her behalf, and to be represented by
15 counsel.

16 (b) The commissioner ~~shall have authority to~~ may
17 summon witnesses in the hearings before him or her, and fees
18 of witnesses summoned on behalf of the state in proceedings
19 to sanction licenses shall be treated as a part of the expenses
20 of administration and enforcement. ~~Such~~ The fees shall be
21 the same as those in similar hearings in the circuit courts of
22 this state. The commissioner may, upon a finding of
23 violation, assess a licensee a sum not to exceed \$150 per

24 violation to reimburse the commissioner for expenditures for
25 witness fees, court reporter fees and travel costs incurred in
26 holding the hearing. ~~Any~~ Moneys so assessed shall be
27 transferred to the Nonintoxicating Beer Fund created by
28 section twenty-three of this article.

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

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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, ~~or~~ suspending,
45 sanctioning or refusing a license ~~shall be~~ is subject to review
46 by the circuit court of Kanawha County ~~West Virginia,~~ or the
47 circuit court in the county where the proposed or licensed
48 premises is located and will or does conduct sales: *Provided,*
49 That in all other respects, such review shall be conducted in
50 the manner provided in chapter twenty-nine-a of this code.
51 ~~when such licensee may be aggrieved by such revocation, or~~
52 ~~suspension~~ The petition for ~~such~~ review must be filed with
53 ~~said~~ the circuit court within ~~a period of thirty days from and~~
54 ~~after the date of~~ following entry of the final order of
55 revocation, ~~or~~ suspension, sanction or refusal issued by the
56 commissioner. ~~and any~~ An applicant or licensee obtaining an
57 order for ~~such~~ review ~~shall be~~ is required to pay the costs and
58 fees incident to transcribing, certifying and transmitting the
59 records pertaining to ~~such~~ the matter to the circuit court. An
60 application to the Supreme Court of Appeals of West

61 Virginia for a writ of error from any final order of the circuit
62 court in ~~any such~~ the matter shall be made within thirty days
63 from and after the entry of ~~such~~ the final circuit court order.

64 (e) All ~~such~~ hearings, upon notice to show cause why
65 license should be revoked, ~~or~~ suspended, sanctioned or
66 refused, before the commissioner shall be held in the offices
67 of the commissioner in Charleston, Kanawha County, ~~West~~
68 ~~Virginia~~, unless otherwise provided by the commissioner in
69 ~~such the~~ notice ~~or agreed upon between the licensee and the~~
70 ~~commissioner; and~~ of hearing. When ~~such the~~ hearing is held
71 elsewhere than in the commissioner's office, the licensee may
72 be required to make deposits of the estimated costs of ~~such~~
73 the hearing.

74 (f) Whenever ~~any~~ a licensee has been convicted of ~~any~~ an
75 offense constituting a violation of the laws of this state or of
76 the United States relating to nonintoxicating beer, or
77 alcoholic liquor, and ~~such the~~ conviction has become final,
78 the clerk of the court in which ~~such the~~ licensee has been
79 convicted shall forward to the commissioner a certified copy

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80 of the order or judgment of conviction if ~~such~~ the clerk has
81 knowledge that the person so convicted is a licensee, together
82 with the certification of ~~such~~ the clerk that the conviction is
83 final.

84 (g) In the case of a Class B licensee with multiple
85 licensed locations, the commissioner may, in his or her
86 discretion, revoke, suspend or otherwise sanction, per the
87 provisions of section twenty-three of this article, only the
88 license for the location or locations involved in the unlawful
89 conduct for which licensure is sanctioned, as opposed to all
90 separately licensed locations of ~~such~~ 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.

1 (a) Before a retail license issued under the authority of
2 this article ~~may be~~ is suspended for a period of more than
3 twenty days, or revoked, the commissioner shall give at least
4 ten days' notice to the retail licensee. Notice shall be in

5 writing, shall state the reason for suspension or revocation,
6 and shall designate a time and place for a hearing where the
7 retail licensee may show cause why the retail license should
8 not be suspended or revoked. Notice shall be sent by
9 certified mail to the address for which the retail license was
10 issued. The retail licensee may, at the time designated for the
11 hearing, produce evidence in his or her behalf and be
12 represented by counsel.

13 (b) ~~Such~~ The hearing and the administrative procedures
14 prior to, during and following the ~~same shall be~~ hearing are
15 governed by and shall be conducted in accordance with the
16 provisions of article five, chapter twenty-nine-a of this code
17 in like manner as if the provisions of article five were fully
18 set forth in this 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 ~~an~~ a final order entered
22 following ~~such the~~ hearing shall have has the right of judicial
23 review ~~thereof in accordance with the provisions of section~~

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24 ~~four, article five, chapter twenty-nine-a of this code with like~~
25 ~~effect as if the provisions of said section four were fully set~~
26 ~~forth in this section.~~ by the circuit court of Kanawha County
27 or the circuit court in the county where the proposed or
28 licensed premises is located and will or does conduct sales:
29 Provided, That in all other respects, such review shall be
30 conducted in the manner provided in chapter twenty-nine-a
31 of this code. The petition for the review must be filed with
32 the circuit court within thirty days following entry of the final
33 order issued by the commissioner. An applicant or licensee
34 obtaining the review is required to pay the costs and fees
35 incident to transcribing, certifying and transmitting the
36 records pertaining to the matter to circuit court.

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

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

48 (f) Upon final revocation, the commissioner shall proceed
49 to reissue the retail license by following the procedures set
50 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.**

1 (a) The commissioner ~~shall~~ may not revoke or suspend
2 ~~any~~ a license issued pursuant to this article or impose ~~any~~
3 civil penalties authorized ~~thereby~~ under this article unless and
4 until a hearing ~~shall be~~ is held after at least ten days' notice
5 to the licensee of the time and place of ~~such~~ the hearing,

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

18 (b) The commissioner ~~shall have authority to~~ may
19 summon witnesses in the hearing before him or her, and fees
20 of witnesses summoned on behalf of the state in proceedings
21 to sanction licenses shall be treated as a part of the expenses
22 of administration and enforcement. ~~Such~~ The fees shall be
23 the same as those in similar hearings in the circuit courts of
24 this state. The commissioner may, upon a finding of

25 violation, assess a licensee a sum, not to exceed \$150 per
26 violation, to reimburse the commissioner for expenditures of
27 witness fees, court reporter fees and travel costs incurred in
28 holding the hearing. ~~Any~~ Moneys so assessed shall be
29 transferred to the Alcohol Beverage Control Enforcement
30 Fund created by section thirteen of this article.

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

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43 provided in this section, is guilty of a misdemeanor and, shall
44 be punished as provided in section twelve of this article.

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

62 records pertaining to ~~such~~ the matter to the circuit court. An
63 application to the Supreme Court of Appeals of West
64 Virginia for a writ of error from any final order of the circuit
65 court in ~~any~~ ~~such~~ the matter shall be made within thirty days
66 from and after the entry of ~~such~~ the final circuit court order.

67 (e) All such hearings, upon notice to show cause why
68 license should be revoked, ~~or~~ suspended, sanctioned or
69 refused, before the commissioner shall be held in the offices
70 of the commissioner in Charleston, Kanawha County, ~~West~~
71 ~~Virginia~~, unless otherwise provided by the commissioner in
72 ~~such~~ the notice ~~or agreed upon between the licensee and the~~
73 ~~commissioner and of hearing~~. When ~~such~~ the hearing is held
74 elsewhere than in the commissioner's office, the licensee may
75 be required to make deposits of the estimated costs of ~~such~~
76 the hearing.

77 (f) Whenever any licensee has been convicted of ~~any~~ an
78 offense constituting a violation of the laws of this state or of
79 the United States relating to alcoholic liquor, or
80 nonintoxicating beer, and ~~such~~ the conviction has become

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81 final, the clerk of the court in which ~~such~~ the licensee has
82 been convicted shall forward to the commissioner a certified
83 copy of the order or judgment of conviction if ~~such~~ the clerk
84 has knowledge that the person ~~so~~ convicted is a licensee,
85 together with the certification of ~~such~~ the clerk that the
86 conviction is final. The commissioner shall report violations
87 of any of the provisions of section twelve or twelve-a of this
88 article to the prosecuting attorney of the county in which the
89 licensed 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 upon refusal, revocation,
suspension or other sanction.**

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

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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) ~~Any~~ 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 ~~such~~ the hearing or upon judicial
52 review thereof as provided in subsections (g) and (h) of this
53 section, then the costs of the hearing shall be assessed against
54 him or her by the commissioner and may be collected by an
55 action 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
58 the hearing and notify the person demanding the hearing of
59 the 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

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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
68 twenty-nine-a of this code.

69 (g) ~~Any~~ 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 an a final order
72 entered following a hearing has the right of judicial review of
73 the order in accordance with the provisions of section four,
74 article five, chapter twenty-nine-a of this code in the circuit
75 court of Kanawha County West Virginia. or the circuit court
76 in the county where the proposed or licensed premises is
77 located and will or does conduct sales: *Provided, That in all*
78 other respects, such review shall be conducted in the manner
79 provided in chapter twenty-nine-a of this code. The petition
80 for the review must be filed with the circuit court within

81 thirty days following entry of the final order issued by the
82 commissioner. An applicant or licensee obtaining judicial
83 review is required to pay the costs and fees incident to
84 transcribing, certifying and transmitting the records
85 pertaining to the matter to circuit court.

86 (h) The judgment of the ~~Kanawha County~~ circuit court
87 reviewing the order of the commissioner is final unless
88 reversed, vacated or modified on appeal to the Supreme
89 Court of Appeals in accordance with the provisions of section
90 one, article six, chapter twenty-nine-a of this code.

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