

Senate Bill No. 362

(By Senator Beach)

[Introduced January 16, 2014; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §11-16-18 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §60-7-12 of said code;
12 and to amend and reenact §60-8-34 of said code, all relating
13 to allowing restaurants, private clubs and wineries to sell
14 alcohol at 10:00 o'clock a.m. on Sundays.

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

16 That §11-16-18 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted; that §60-7-12 of said code be amended and
18 reenacted; and that §60-8-34 of said code be amended and reenacted,
19 all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

(a) It shall be unlawful:

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

11 (2) For any licensee, his, her, its or their servants, agents
12 or employees to sell, furnish or give any nonintoxicating beer as
13 defined in this article to any person visibly or noticeably
14 intoxicated or to any person known to be insane or known to be a
15 habitual drunkard;

16 (3) For any licensee, his, her, its or their servants, agents
17 or employees to sell, furnish or give any nonintoxicating beer as
18 defined in this article to any person who is less than twenty-one
19 years of age;

20 (4) For any distributor to sell or offer to sell, or any
21 retailer to purchase or receive, any nonintoxicating beer as
22 defined in this article, except for cash and no right of action
23 shall exist to collect any claims for credit extended contrary to
24 the provisions of this subdivision. Nothing ~~herein~~ contained in

1 this section shall prohibit prohibits a licensee from crediting to
2 a purchaser the actual price charged for packages or containers
3 returned by the original purchaser as a credit on any sale, or from
4 refunding to any purchaser the amount paid or deposited for the
5 containers when title is retained by the vendor: *Provided*, That a
6 distributor may accept an electronic transfer of funds if the
7 transfer of funds is initiated by an irrevocable payment order on
8 the invoiced amount for the nonintoxicating beer. The cost of the
9 electronic fund transfer shall be borne by the retailer and the
10 distributor ~~must~~ shall initiate the transfer no later than noon of
11 one business day after the delivery;

12 (5) For any brewer or distributor or brew-pub or his, her, its
13 or their agents to transport or deliver nonintoxicating beer as
14 defined in this article to any retail licensee on Sunday;

15 (6) For any brewer or distributor to give, furnish, rent or
16 sell any equipment, fixtures, signs or supplies directly or
17 indirectly or through a subsidiary or affiliate to any licensee
18 engaged in selling products of the brewing industry at retail or to
19 offer any prize, premium, gift or other similar inducement, except
20 advertising matter of nominal value, to either trade or consumer
21 buyers: *Provided*, That a distributor may offer, for sale or rent,
22 tanks of carbonic gas. Nothing ~~herein~~ contained in this section
23 ~~shall prohibit prohibits~~ a brewer from sponsoring any professional
24 or amateur athletic event or from providing prizes or awards for

1 participants and winners in any events: *Provided, however,* That no
2 event shall be sponsored which permits actual participation by
3 athletes or other persons who are minors, unless specifically
4 authorized by the commissioner;

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

7 (8) For any licensee except the holder of a license to operate
8 a private club issued under the provisions of article seven,
9 chapter sixty of this code or a holder of a license or a private
10 wine restaurant issued under the provisions of article eight of
11 said chapter to possess a federal license, tax receipt or other
12 permit entitling, authorizing or allowing the licensee to sell
13 liquor or alcoholic drinks other than nonintoxicating beer;

14 (9) For any licensee to obstruct the view of the interior of
15 his or her premises by enclosure, lattice, drapes or any means
16 which would prevent plain view of the patrons occupying the
17 premises. The interior of all licensed premises shall be adequately
18 lighted at all times: *Provided,* That provisions of this subdivision
19 do not apply to the premises of a Class B retailer, the premises of
20 a private club licensed under the provisions of article seven,
21 chapter sixty of this code or the premises of a private wine
22 restaurant licensed under the provisions of article eight of said
23 chapter;

24 (10) For any licensee to manufacture, import, sell, trade,

1 barter, possess or acquiesce in the sale, possession or consumption
2 of any alcoholic liquors on the premises covered by a license or on
3 premises directly or indirectly used in connection ~~therewith~~ with
4 it: *Provided*, That the prohibition contained in this subdivision
5 with respect to the selling or possessing or to the acquiescence in
6 the sale, possession or consumption of alcoholic liquors is not
7 applicable with respect to the holder of a license to operate a
8 private club issued under the provisions of article seven, chapter
9 sixty of this code nor shall the prohibition be applicable to a
10 private wine restaurant licensed under the provisions of article
11 eight of said chapter insofar as the private wine restaurant is
12 authorized to serve wine;

13 (11) For any retail licensee to sell or dispense
14 nonintoxicating beer, as defined in this article, purchased or
15 acquired from any source other than a distributor, brewer or
16 manufacturer licensed under the laws of this state;

17 (12) For any licensee to permit loud, boisterous or disorderly
18 conduct of any kind upon his or her premises or to permit the use
19 of loud musical instruments if either or any of the same may
20 disturb the peace and ~~quietude~~ quiet of the community ~~wherein~~ where
21 the business is located: *Provided*, That no licensee may have in
22 connection with his or her place of business any loudspeaker
23 located on the outside of the licensed premises that broadcasts or
24 carries music of any kind;

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

6 (14) For any distributor to sell, possess for sale, transport
7 or distribute nonintoxicating beer except in the original
8 container;

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

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

14 (17) For any Class A licensee, his, her, its or their
15 servants, agents or employees, or for any licensee by or through
16 any servants, agents or employees, to allow, suffer or permit any
17 person less than eighteen years of age to loiter in or upon any
18 licensed premises; except, however, that the provisions of this
19 subdivision do not apply where a person under the age of eighteen
20 years is in or upon the premises in the immediate company of his or
21 her parent or parents, or where and while a person under the age of
22 eighteen years is in or upon the premises for the purpose of and
23 actually making a lawful purchase of any items or commodities
24 therein sold, or for the purchase of and actually receiving any

1 lawful service therein rendered, including the consumption of any
2 item of food, drink or soft drink therein lawfully prepared and
3 served or sold for consumption on the premises;

4 (18) For any distributor to sell, offer for sale, distribute
5 or deliver any nonintoxicating beer outside the territory assigned
6 to any distributor by the brewer or manufacturer of nonintoxicating
7 beer or to sell, offer for sale, distribute or deliver
8 nonintoxicating beer to any retailer whose principal place of
9 business or licensed premises is within the assigned territory of
10 another distributor of such nonintoxicating beer: *Provided*, That
11 nothing ~~herein~~ in this section is considered to prohibit sales of
12 convenience between distributors licensed in this state ~~wherein~~
13 where one distributor sells, transfers or delivers to another
14 distributor a particular brand or brands for sale at wholesale; and

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

19 (b) Any person who violates any provision of this article
20 including, but not limited to, any provision of this section, or
21 any rule, or order lawfully promulgated by the commissioner, or who
22 makes any false statement concerning any material fact in
23 submitting application for license or for a renewal of a license or
24 in any hearing concerning the revocation thereof, or who commits

1 any of the acts ~~herein~~ declared in this section to be unlawful is
2 guilty of a misdemeanor and, upon conviction thereof, shall be
3 punished for each offense by a fine of not less than \$25, nor more
4 than \$500, or confined in the county or regional jail for not less
5 than thirty days nor more than six months, or by both fine and
6 confinement. Magistrates ~~shall~~ have concurrent jurisdiction with
7 the circuit court and any other courts having criminal jurisdiction
8 in their county for the trial of all misdemeanors arising under
9 this article.

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

11 (A) Has installed a transaction scan device on its licensed
12 premises; and

13 (B) Can demonstrate that it requires each employee, servant or
14 agent to verify the age of any individual to whom nonintoxicating
15 beer is sold, furnished or given away by the use of the transaction
16 device may not be subject to: (I) Any criminal penalties
17 whatsoever, including those set forth in subsection (b) of this
18 section; (ii) any administrative penalties from the commissioner;
19 or (iii) any civil liability whatsoever for the improper sale,
20 furnishing or giving away of nonintoxicating beer to an individual
21 who is less than twenty-one years of age by one of his or her
22 employees, servants or agents. Any agent, servant or employee who
23 has improperly sold, furnished or given away nonintoxicating beer
24 to an individual less than twenty-one years of age is subject to

1 the criminal penalties of subsection (b) of this section. Any
2 agent, servant or employee who has improperly sold, furnished or
3 given away nonintoxicating beer to an individual less than twenty-
4 one years of age is subject to termination from employment, and the
5 employer shall have no civil liability for the termination.

6 (2) For purposes of this section, a Class B licensee can
7 demonstrate that it requires each employee, servant or agent to
8 verify the age of any individual to whom nonintoxicating beer is
9 sold by providing evidence: (A) That it has developed a written
10 policy which requires each employee, servant or agent to verify the
11 age of each individual to whom nonintoxicating beer will be sold,
12 furnished or given away; (B) that it has communicated this policy
13 to each employee, servant or agent; and (C) that it monitors the
14 actions of its employees, servants or agents regarding the sale,
15 furnishing or giving away of nonintoxicating beer and that it has
16 taken corrective action for any discovered noncompliance with this
17 policy.

18 (3) "Transaction scan" means the process by which a person
19 checks, by means of a transaction scan device, the age and identity
20 of the cardholder, and "transaction scan device" means any
21 commercial device or combination of devices used at a point of sale
22 that is capable of deciphering in an electronically readable format
23 the information enclosed on the magnetic strip or bar code of a
24 driver's license or other governmental identity card.

1 (d) Nothing in this article nor any rule or regulation of the
2 commissioner shall prevent or be considered to prohibit any
3 licensee from employing any person who is at least eighteen years
4 of age to serve in the licensee's lawful employ, including the sale
5 or delivery of nonintoxicating beer as defined in this article.
6 With the prior approval of the commissioner, a licensee whose
7 principal business is the sale of food or consumer goods or the
8 providing of recreational activities, including, but not limited
9 to, nationally franchised fast food outlets, family-oriented
10 restaurants, bowling alleys, drug stores, discount stores, grocery
11 stores and convenience stores, may employ persons who are less than
12 eighteen years of age but at least sixteen years of age: *Provided,*
13 That the person's duties may not include the sale or delivery of
14 nonintoxicating beer or alcoholic liquors: *Provided, however,* That
15 the authorization to employ persons under the age of eighteen years
16 shall be clearly indicated on the licensee's license.

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

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

19 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

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

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

1 (2) Authorize or permit any disturbance of the peace; obscene,
2 lewd, immoral or improper entertainment, conduct or practice,
3 gambling or any slot machine, multiple coin console machine,
4 multiple coin console slot machine or device in the nature of a
5 slot machine;

6 (3) Sell, give away or permit the sale of, gift to or the
7 procurement of any nonintoxicating beer, wine or alcoholic liquors
8 for or to, or permit the consumption of nonintoxicating beer, wine
9 or alcoholic liquors on the licensee's premises, by any person less
10 than twenty-one years of age;

11 (4) Sell, give away or permit the sale of, gift to or the
12 procurement of any nonintoxicating beer, wine or alcoholic liquors,
13 for or to any person known to be deemed legally incompetent, or for
14 or to any person who is physically incapacitated due to consumption
15 of nonintoxicating beer, wine or alcoholic liquor or the use of
16 drugs;

17 (5) Sell, give or dispense nonintoxicating beer, wine or
18 alcoholic liquors in or on any licensed premises or in any rooms
19 directly connected therewith, between the hours of three o'clock
20 a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on any Sunday;

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

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

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

6 (9) Sell, offer for sale, give away, facilitate the use of or
7 allow the use of carbon dioxide, cyclopropane, ethylene, helium or
8 nitrous oxide for purposes of human consumption except as
9 authorized by the commissioner;

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

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

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

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

23 (c) Any person who violates any of the foregoing provisions is
24 guilty of a misdemeanor and, upon conviction thereof, shall be

1 fined not less than \$500 nor more than \$1,000, or imprisoned in the
2 county jail for a period not to exceed one year, or both fined and
3 imprisoned.

4 **ARTICLE 8. SALE OF WINES.**

5 **§60-8-34. When retail sales prohibited.**

6 It shall be unlawful for a retailer, farm winery, wine
7 specialty shop retailer, private wine bed and breakfast, private
8 wine restaurant or private wine spa licensee, his or her servants,
9 agents or employees to sell or deliver wine between the hours of
10 two o'clock a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on Sundays,
11 or between the hours of two o'clock a.m. and seven o'clock a.m. on
12 weekdays and Saturdays.

NOTE: The purpose of this bill is to allow restaurants,
private clubs and wineries to sell alcoholic beverages at ten
o'clock a.m. on Sundays.

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