

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2888**

BY DELEGATES HOWELL, PHILLIPS, FOLK, HAMRICK,

FRICH AND WILSON

[Introduced March 9, 2017; Referred  
to the Committee on Political Subdivisions then the  
Judiciary.]

1 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended, relating  
 2 to removing the restriction on liquor licensees from having speakers outside or playing  
 3 music outdoors.

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

1 That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 16. NONINTOXICATING BEER.**

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

1 (a) It shall be unlawful:

2 (1) For any licensee, his, her, its or their servants, agents or employees to sell, give or  
 3 dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms  
 4 directly connected, nonintoxicating beer or cooler on weekdays between the hours of two o'clock  
 5 a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., or a  
 6 Class A retail dealer who sells nonintoxicating beer for on premises consumption only between  
 7 the hours of two o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in  
 8 section three-pp, article one, chapter seven of this code, on any Sunday, except in private clubs  
 9 licensed under the provisions of article seven, chapter sixty of this code, where the hours shall  
 10 conform with the hours of sale of alcoholic liquors;

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

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

17 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any  
 18 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to

19 collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein  
20 contained in this section prohibits a licensee from crediting to a purchaser the actual price charged  
21 for packages or containers returned by the original purchaser as a credit on any sale, or from  
22 refunding to any purchaser the amount paid or deposited for the containers when title is retained  
23 by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer  
24 of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating  
25 beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall  
26 initiate the transfer no later than noon of one business day after the delivery;

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

29 (6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs  
30 or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in  
31 selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar  
32 inducement, except advertising matter of nominal value, to either trade or consumer buyers:  
33 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein  
34 contained in this section prohibits a brewer from sponsoring any professional or amateur athletic  
35 event or from providing prizes or awards for participants and winners in any events: *Provided*,  
36 *however*, That no event shall be sponsored which permits actual participation by athletes or other  
37 persons who are minors, unless specifically authorized by the commissioner;

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

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

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

51 (10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in  
52 the sale, possession or consumption of any alcoholic liquors on the premises covered by a license  
53 or on premises directly or indirectly used in connection with it: *Provided,* That the prohibition  
54 contained in this subdivision with respect to the selling or possessing or to the acquiescence in  
55 the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder  
56 of a license to operate a private club issued under the provisions of article seven, chapter sixty of  
57 this code nor shall the prohibition be applicable to a private wine restaurant licensed under the  
58 provisions of article eight of said chapter insofar as the private wine restaurant is authorized to  
59 serve wine;

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

63 (12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his  
64 or her premises or to permit the use of loud musical instruments if either or any of the same may  
65 disturb the peace and quietude of the community where the business is located: *Provided, That*  
66 *a municipality has no ordinance that prohibits such actions;* *Provided,* That no licensee may have  
67 ~~in connection with his or her place of business any loudspeaker located on the outside of the~~  
68 ~~licensed premises that broadcasts or carries music of any kind;~~

69 (13) For any person whose license has been revoked, as provided in this article, to obtain  
70 employment with any retailer within the period of one year from the date of the revocation, or for

71 any retailer to knowingly employ that person within the specified time;

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

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

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

78 (17) For any Class A licensee, his, her, its or their servants, agents or employees, or for  
79 any licensee by or through any servants, agents or employees, to allow, suffer or permit any  
80 person less than eighteen years of age to loiter in or upon any licensed premises; except,  
81 however, that the provisions of this subdivision do not apply where a person under the age of  
82 eighteen years is in or upon the premises in the immediate company of his or her parent or  
83 parents, or where and while a person under the age of eighteen years is in or upon the premises  
84 for the purpose of and actually making a lawful purchase of any items or commodities therein  
85 sold, or for the purchase of and actually receiving any lawful service therein rendered, including  
86 the consumption of any item of food, drink or soft drink therein lawfully prepared and served or  
87 sold for consumption on the premises;

88 (18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer  
89 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating  
90 beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose  
91 principal place of business or licensed premises is within the assigned territory of another  
92 distributor of such nonintoxicating beer: *Provided*, That nothing in this section is considered to  
93 prohibit sales of convenience between distributors licensed in this state where one distributor  
94 sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale;  
95 and

96 (19) For any licensee or any agent, servant or employee of any licensee to knowingly

97 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of  
98 chapter twenty-nine-a of this code.

99 (b) Any person who violates any provision of this article including, but not limited to, any  
100 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who  
101 makes any false statement concerning any material fact in submitting application for license or  
102 for a renewal of a license or in any hearing concerning the revocation thereof, or who commits  
103 any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction  
104 thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or  
105 confined in the county or regional jail for not less than thirty days nor more than six months, or by  
106 both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any  
107 other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising  
108 under this article.

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

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

111 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of  
112 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the  
113 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those  
114 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;  
115 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of  
116 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her  
117 employees, servants or agents. Any agent, servant or employee who has improperly sold,  
118 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age  
119 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or  
120 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual  
121 less than twenty-one years of age is subject to termination from employment, and the employer  
122 shall have no civil liability for the termination.

123           (2) For purposes of this section, a Class B licensee can demonstrate that it requires each  
124 employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is  
125 sold by providing evidence: (A) That it has developed a written policy which requires each  
126 employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will  
127 be sold, furnished or given away; (B) that it has communicated this policy to each employee,  
128 servant or agent; and (C) that it monitors the actions of its employees, servants or agents  
129 regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken  
130 corrective action for any discovered noncompliance with this policy.

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

136           (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or  
137 be considered to prohibit any licensee from employing any person who is at least eighteen years  
138 of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating  
139 beer as defined in this article. With the prior approval of the commissioner, a licensee whose  
140 principal business is the sale of food or consumer goods or the providing of recreational activities,  
141 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,  
142 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ  
143 persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That  
144 the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:  
145 *Provided, however*, That the authorization to employ persons under the age of eighteen years  
146 shall be clearly indicated on the licensee's license.

NOTE: The purpose of this bill is to remove the restriction on liquor licenses from having

speakers outside or playing music outdoors.

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