

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3106**

BY DELEGATES HOWELL, C. MARTIN, HAMRICK AND

WILSON

[ Introduced February 12, 2019; Referred  
to the Committee on Government Organization.]

1 A BILL to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended, relating  
 2 to requiring retail licensees to purchase at least 10 percent of available SKUs from the  
 3 commissioner; removing pricing restrictions for retail licensees; removing square footage  
 4 requirements to conduct or restrict alcohol sales; establishing certain conditions for a retail  
 5 licensee to display at least one of every SKU for sale by a retail licensee to its patrons;  
 6 and requiring the commissioner to supply or reasonably attempt to supply a prepaid order  
 7 for a retail licensee.

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

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

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

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to  
 2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according  
 3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor  
 4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to §60-  
 5 4-3 of this code.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General  
 7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to  
 8 the average for the past three years. The net revenue derived from the sale of alcoholic liquors  
 9 shall be deposited into the General Revenue Fund in the manner provided in §60-3-17 of this  
 10 code.

11 (c) Notwithstanding any provision of this code to the contrary, the commissioner shall  
 12 specify the maximum wholesale markup percentage which may be applied to the prices paid by  
 13 the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor,  
 14 other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other  
 15 than wine, for resale in this state only from the commissioner, and the provisions of §60-6-12 and

16 §60-6-13 of this code shall not apply to the transportation of the liquor. A retail licensee must  
17 purchase at least 10 percent of available stock keeping unit ("SKU") or brands the commissioner  
18 offers at the warehouse where the retail licensee purchases its liquor: *Provided*, That a retail  
19 licensee shall purchase wine from a wine distributor who is duly licensed under §60-8-1 *et seq.*  
20 of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state  
21 at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the  
22 commissioner, in his or her discretion, may upon written request permit a retail licensee to store  
23 liquor at a site other than the retail outlet or outlets.

24 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic  
25 funds transfer which shall be initiated by the commissioner on the business day following the retail  
26 licensees order or by money order, certified check or cashier's check which shall be received by  
27 the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if  
28 a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety  
29 acceptable to the commissioner from a financial institution acceptable to the commissioner  
30 guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks  
31 in an amount up to the amount of the letter of credit.

32 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-  
33 7-1 *et seq.* of this code at less than ~~44~~ percent of the retail licensee's cost as defined in §47-  
34 11A-6 of this code.

35 (2) A retail licensee may not sell liquor to the general public at less than ~~44~~ percent of  
36 the retail licensee's cost as defined in §47-11A-6 of this code.

37 (f) The commissioner is not permitted to require a retail licensee to have a particular  
38 amount of square footage to conduct alcohol sales or to limit alcohol sales: *Provided*, That a retail  
39 licensee have enough space to display at least one of every SKU offered for sale to its patrons.

40 (g) The commissioner is not permitted to deny any special order or prepaid order from a  
41 retail licensee attempting to procure the product for the retail licensee's patron. The commissioner

- 42 may supply the order through a warehouse's standard stock or its special-order stock. If the  
43 commissioner does not have the prepaid order in stock at any warehouse in this state, the  
44 commissioner must make reasonable attempts to procure the order for the retail licensee.

NOTE: The purpose of this bill is to require retail licensees to purchase at least 10 percent of SKUs available for sale from the commissioner; to strike requirements pertaining to retail sales; to remove square footage requirements for alcohol sales; establish conditions to display SKUs for sale by a retail licensee; and require the commissioner supply or reasonably attempt to supply a prepaid order from a retail licensee.

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