

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 281

BY SENATORS TARR, RUCKER, AND SMITH

[Introduced February 13, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §60-2-23; and to amend and reenact §60-3A-27, all relating to prohibiting the
 3 Alcohol Beverage Control Commission from taking enforcement action against activities
 4 that are beyond the scope of the commission's purview; establishing criminal penalties
 5 against commission officers and employees for pursuing prohibited enforcement actions;
 6 and providing an affirmative defense for licensees or applicants for licenses against
 7 prohibited enforcement actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-23. Limitations on enforcement action; criminal penalties.

1 (a) The commissioner and his or her assistants and employees shall not initiate
 2 enforcement action, including, but not limited to, revocation of a license, in response to any
 3 activities that fall beyond the scope of the activities within the commission's purview under §60-
 4 1-1, et seq. of this code or the rules promulgated by the commission pursuant to this chapter.

5 (b) The initiation of an enforcement action by the commissioner and/or his or her assistants
 6 and employees for any reason or purpose not contained in §60-1-1, et seq. of this code or the
 7 rules promulgated by the commission pursuant to this chapter shall constitute a misdemeanor
 8 and, any officer or employee convicted thereof shall be punished by a fine of not more than \$500.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-27. Suspension or revocation of retail license; affirmative defense.

1 (a) The commissioner may, upon his or her own motion, or upon the sworn complaint of
 2 any person, conduct an investigation to determine if any provision of this article or of any rule
 3 promulgated by the board or commissioner under authority of this article has been violated by any
 4 retail licensee. The commissioner may suspend or revoke a retail license if the retail licensee or
 5 any employee thereof acting in the scope of his or her employment has violated any such

6 provision, and may suspend a retail license without hearing for a period not to exceed twenty days
7 if he or she finds probable cause to believe that the retail licensee or any employee thereof acting
8 in the scope of his or her employment has willfully violated any such provision.

9 (b) The commissioner may revoke a retail license for any reason which would constitute
10 grounds for the denial of an application filed pursuant to section eight of this article.

11 (c) In any proceeding for denial, suspension, or revocation of a license, the licensee or
12 license applicant may assert as an affirmative defense that the purpose for the denial, suspension,
13 or revocation of the license is for reasons other than violation of a provision of this article or of a
14 rule promulgated by the board or commissioner under authority of this article.

NOTE: The purpose of this bill is to clarify that the Alcohol Beverage Control Commission is prohibited from initiating enforcement actions in response to activities that fall outside of the commission's purview. The bill also establishes criminal penalties against commission officers and employees for pursuing enforcement actions that fall outside of the commission's purview. The bill also provides licensees and applicants with the ability to assert as an affirmative defense to any enforcement action that such enforcement is outside of the commission's purview.

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