

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 316

By Senator Tarr

[Introduced January 12, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended, relating
 2 to nonintoxicating beer; unlawful acts of licensees; and providing that it is unlawful for
 3 brewers or distributors to offer any prize, premium, gift, or other similar inducement, except
 4 advertising matter, including indoor electronic or mechanical signs, of nominal value up to
 5 \$250 per stock keeping unit, to either trade or consumer buyers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

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

1 (a) It is unlawful:

2 (1) Except as provided for in §7-1-3ss and this chapter of this code, any licensee, his, her,
 3 its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or
 4 consume, in or on any licensed premises or in any rooms directly connected thereto,
 5 nonintoxicating beer between the hours of 2:00 a.m. and 6:00 a.m., or a Class A retail dealer to
 6 sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and
 7 6:00 a.m;

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

11 (3) 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 who is less than 21 years of
 13 age;

14 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
 15 nonintoxicating beer as defined in this article, except for cash and a right of action ~~shall~~ may not
 16 exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing
 17 contained in this section prohibits a licensee from crediting to a purchasing person the actual price
 18 charged for packages or containers returned by the original purchasing person as a credit on any

19 sale, or from refunding to any purchasing person the amount paid or deposited for the containers
20 when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer
21 of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount
22 for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer
23 and the distributor shall initiate the transfer no later than noon of one business day after the
24 delivery;

25 (5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs,
26 supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee
27 engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or
28 other similar inducement, except advertising matter, including indoor electronic or mechanical
29 signs, of nominal value up to ~~\$25.00~~ \$250 per stock keeping unit, to either trade or consumer
30 buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided*,
31 *however*, That, in the interest of public health and safety, a distributor may, independently or
32 through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies,
33 and cleaning services to a licensed retailer so long as the furnishing or sale of draught line
34 services may be negotiated at no less than actual cost: *Provided further*, That a distributor may
35 furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through
36 a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail
37 under the conditions and within the limitations as prescribed in this section. Nothing contained in
38 this section prohibits a brewer from sponsoring any professional or amateur athletic event or from
39 providing prizes or awards for participants and winners in any events.

40 (6) For any brewer or distributor to sponsor any professional or amateur athletic event or
41 provide prizes or awards for participants and winners when a majority of the athletes participating
42 in the event are minors, unless the event is specifically authorized by the commissioner;

43 (7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines
44 where the draught lines have not been cleaned at least every two weeks in accordance with rules

45 promulgated by the commissioner, and where written records of all cleanings are not maintained
46 and available for inspection;

47 (8) For any licensee to permit in his or her premises any lewd, immoral, or improper
48 entertainment, conduct, or practice;

49 (9) For any licensee, except the holder of a license to operate a private club issued under
50 the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant
51 issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt,
52 or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other
53 than nonintoxicating beer;

54 (10) For any licensee to obstruct the view of the interior of his or her premises by
55 enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying
56 the premises. The interior of all licensed premises shall be adequately lighted at all times:
57 *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the
58 premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the
59 premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

60 (11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in
61 the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license
62 or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition
63 contained in this subdivision with respect to the selling or possessing or to the acquiescence in the
64 sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of
65 a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code, nor
66 shall the prohibition be applicable to a private wine restaurant licensed under the provisions of
67 §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

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

71 (13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his
72 or her premises or to permit the use of loud musical instruments if either or any of the same may
73 disturb the peace and quietude of the community where the business is located: *Provided*, That a
74 licensee may have speaker systems for outside broadcasting as long as the noise levels do not
75 create a public nuisance or violate local noise ordinances;

76 (14) For any person whose license has been revoked, as provided in this article, to obtain
77 employment with any retailer within the period of one year from the date of the revocation, or for
78 any retailer to knowingly employ that person within the specified time;

79 (15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating
80 beer except in the original container;

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

83 (17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or
84 her licensed premises;

85 (18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for
86 any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any
87 person less than 18 years of age to loiter in or upon any licensed premises; except, however, that
88 the provisions of this subdivision do not apply where a person under the age of 18 years is in or
89 upon the premises in the immediate company of a parent or legal guardian, or where and while a
90 person under the age of 18 years is in or upon the premises for the purpose of and actually making
91 a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving
92 any lawful service rendered in the licensed premises, including the consumption of any item of
93 food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

94 (19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer
95 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
96 beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose

97 principal place of business or licensed premises is within the assigned territory of another
98 distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to
99 prohibit sales of convenience between distributors licensed in this state where one distributor
100 sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale;
101 and

102 (20) For any licensee or any agent, servant, or employee of any licensee to knowingly
103 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of
104 chapter 29A of this code.

105 (b) Any person who violates any provision of this article, including, but not limited to, any
106 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
107 makes any false statement concerning any material fact in submitting an application for a license
108 or for a renewal of a license or in any hearing concerning the revocation of a license, or who
109 commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and,
110 upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more
111 than \$500, or confined in ~~the county or regional~~ jail for not less than 30 days nor more than six
112 months, or ~~by both fine and confinement~~ fined and confined. Magistrates have concurrent
113 jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for
114 the trial of all misdemeanors arising under this article.

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

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

117 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of
118 any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or
119 given away by the use of the transaction device is not subject to: (i) Any criminal penalties
120 whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative
121 penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale,
122 furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who

123 is less than 21 years of age by one of his or her employees, servants, or agents. Any agent,
124 servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an
125 individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this
126 section. Any agent, servant, or employee who has improperly sold, furnished, or given away
127 nonintoxicating beer to an individual less than 21 years of age is subject to termination from
128 employment, and the employer shall have no civil liability for the termination.

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

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

142 (d) Nothing in this article nor any rule of the commissioner ~~shall~~ may prevent or be
143 considered to prohibit any licensee from employing any person who is at least 18 years of age to
144 serve in the licensee's lawful employ, including the sale or distribution of nonintoxicating beer as
145 defined in this article. With the prior approval of the commissioner, a licensee whose principal
146 business is the sale of food or consumer goods, or the providing of recreational activities,
147 including, but not limited to, nationally franchised fast food outlets, family oriented restaurants,
148 bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ

149 persons who are less than 18 years of age, but at least 16 years of age: *Provided*, That the
150 person's duties may include the sale of nonintoxicating beer or alcoholic liquors only when directly
151 supervised by a person 21 years of age or older: *Provided, however*, That the authorization to
152 employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

NOTE: The purpose of this bill is to provide that it is unlawful for brewers or distributors to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$250.00 per stock keeping unit, to either trade or consumer buyers.

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