WEST VIRGINIA CODE: §11-16-18

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

(a) It is unlawful:

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

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

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to $25.00 per stock keeping unit, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*, That, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than actual cost: *Provided further,* That a distributor may furnish, rent, or sell equipment, fixtures, signs,

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services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

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

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;

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

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

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

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

(12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer, or manufacturer

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licensed under the laws of this state;

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

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

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

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

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

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

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

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

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

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

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

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or given away by the use of the transaction device is not subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

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

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

(d) Nothing in this article nor any rule of the commissioner shall prevent or be considered to

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prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee's lawful employ, including the sale or distribution of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties may include the sale of nonintoxicating beer or alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however*, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

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