WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 89

(By Mr. Weickes, Mr. President)

PASSED February 26, 1945

In Effect July 4, 1945
ENROLLED
Senate Bill No. 89
(By Mr. Vickers, Mr. President)

[Passed February 26, 1945; effective July 1, 1945.]

AN ACT to amend and reenact sections two, three, four, five, twelve, thirteen, fourteen, fifteen, sixteen, eighteen and nineteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, and to provide that said article fifteen and all subsequent acts amendatory thereto shall hereafter be designated as article sixteen of said chapter, and to further amend said article by adding thereto sections fifteen-a, and fifteen-b, all relating to nonintoxicating beer.
Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, twelve, thirteen, fourteen, fifteen, sixteen, eighteen and nineteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted, that said article be hereafter designated article sixteen of said chapter, and that said article be further amended by adding thereto sections fifteen-a, and sixteen-b, all to read as follows:

Section 2. For the purpose of this article:

"Nonintoxicating beer" shall mean all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, and containing not more than three and two-tenths per centum of alcohol by weight, which are hereby declared to be nonintoxicating and the word "Liquor" as used in chapter sixty of the code of West Virginia shall not be construed to include or embrace any cereal malt beverage or product of the brewing industry, or any mixture
or preparation of like nature containing not more than three and two-tenths per centum of alcohol by weight.

"Person" shall mean and include an individual, firm, partnership, association or corporation.

"Retailer" shall mean any person selling, serving, delivering or otherwise dispensing nonintoxicating beer at his established and licensed place of business.

"Distributor" shall mean any person, whose chief place of business is within the state of West Virginia, jobbing or distributing nonintoxicating beer to retailers at wholesale.

"Brewer" shall mean any person, firm, association, partnership or corporation manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

"Original container" shall mean the container used by the brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer for sale at wholesale.

Sec. 3. No person shall manufacture, sell, possess for sale, transport or distribute nonintoxicating beer except
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3 in accordance with the provisions of this act, and after
4 first obtaining a state license therefor, as hereinafter pro-
5 vided: Provided, however, That nothing herein contained
6 shall prohibit any brewer located within the state from
7 manufacturing or transporting for sale without the state
8 beer of an alcoholic strength greater than three and two-
9 tenths per cent by weight.

Sec. 4. There is hereby levied and imposed an annual
2 license tax upon all dealers in and of nonintoxicating
3 beer as defined by this act, which license period shall
4 begin on the first day of July of each year and end on
5 the thirtieth day of June of the following year, and if
6 granted for a less period the same shall be computed
7 quarterly in proportion to the remainder of the fiscal
8 year as follows:
9 (a) Retail dealers shall be divided into two classes,
10 Class A and Class B. In the case of a Class A retail dealer
11 the license fee shall be one hundred dollars for each place
12 of business; except such license fee for social, fraternal
13 or private clubs not operating for profit, and having been
14 in continuous operation for two years or more im-
mediately preceding the date of application, shall be fifty
dollars; and except that railroads operating in this state
may dispense nonintoxicating beer upon payment of an
annual license tax of ten dollars for each dining, club,
or buffet car in which the same is dispensed.

Class A licenses issued for social, fraternal or public
clubs and for railroad dining, club or buffet cars, as
herein provided, shall authorize the licensee to sell non-
intoxicating beer at retail for consumption only on the
licensed premises where sold. All other Class A licenses
shall authorize the licensee to sell nonintoxicating beer
at retail for consumption on or off the licensed premises.

In the case of a Class B retailer, the license fee shall
be five dollars for each place of business. A Class B
license shall authorize the licensee to sell nonintoxicating
beer at retail in bottles, cans or other sealed containers
only, and only for consumption off the licensed premises.

Sales under this license to any person at any one time
must be in less quantities than five gallons. Such license
may be issued only to the proprietor or owner of a grocery
store. For the purpose of this act the term “grocery
"store" means and includes any retail establishment commonly known as a grocery store, or delicatessen, where food or food products are sold for consumption off the premises.

(b) In the case of a distributor the license fee shall be two hundred fifty dollars for each place of business.

(c) In the case of a brewer, with its principal place of business located in this state, the license fee shall be five hundred dollars for each place of manufacture.

Sec. 5. In addition to furnishing the information required by this act, each brewer or distributor applying for a license under this act shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the West Virginia nonintoxicating beer commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the laws of the state of West Virginia with respect to the sale, transportation, storage and distribution of nonintoxicating beer; which said bond shall be forfeited
to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond, in the case of a brewer, shall be not less than five thousand dollars, nor more than ten thousand dollars, and in the case of a distributor, not less than two thousand dollars, nor more than five thousand dollars for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. In the case of brewers shipping non-intoxicating beer into the state, they must also furnish a bond in a penalty of not less than five thousand dollars nor more than ten thousand dollars conditioned for the fulfillment and observation of state laws.

Each and every Class A retail dealer, in addition to furnishing the information required by this act, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, in an amount not less than two hundred dollars, nor more than five hundred dollars, within the
discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the laws of the state of West Virginia with respect to the distribution, sale and dispensing of nonintoxicating beer, and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

Upon the revocation of the license of any Class A retail dealer by the commissioner or by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the prosecuting attorney of the county wherein such retail dealer's place of business is located, or the prosecuting attorney of the county wherein the licensee resides, of such revocation and upon receipt of said notice it shall be the duty of such prosecuting attorney forthwith to institute appropriate proceedings for the collection of the full amount of said bond. Upon request of such prosecuting attorney, the commissioner shall deliver the bond to him. Wilful refusal without just cause therefor by the prosecuting
attorney to perform said duty hereby imposed shall sub-
ject him to removal from office by the circuit court of
the county for which said prosecuting attorney was
elected upon proper proceedings and proof in the manner
provided by law.

Sec. 12. A license may be issued by the commissioner
to any person who submits an application therefor, ac-
 companied by a license fee and, where required, a bond,
 stating under oath:

(a) The name and residence of the applicant, how
long he has resided there, that he has been a resident
of the state for a period of two years next preceding
the date of his application, that he is twenty-one years
of age, and, if a firm, association, partnership or corpora-
tion, the residence of the members or officers for a period
of two years next preceding the date of such application:

Provided, That if any person, firm, partnership, associa-
tion or corporation applies for a license as a distributor,
such person, or in the case of a firm, partnership, associa-
tion, or corporation, the members or officers thereof, shall
state under oath that he or they have been bona fide
residents of the state for four years next preceding the date of such application;

(b) The place of birth of applicant and that he is a citizen of the United States and, if a naturalized citizen, when and where naturalized; and, if a corporation, organized or authorized to do business under the laws of the state, when and where incorporated, with the names and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association or partnership, the place of birth of each member of the firm, association or partnership, that each member is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application:

Provided, however, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a Class B retailer's license, but the officer, agent, or employee who shall manage and be in charge of the licensed premises shall possess all the qualifications required of an individual applicant for a retailer's license, including the requirements as to residence:
(c) The particular place for which the license is desired and a detailed description thereof;
(d) The name of the owner of the building and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises;
(e) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building;
(f) That the applicant has never been convicted of a felony, or a violation of the liquor laws either federal or state;
(g) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license;
(h) That the applicant has not during five years next immediately preceding the date of said application had a nonintoxicating beer license revoked, nor during the same period been convicted of any criminal offense.
The foregoing provisions and requirements are mandatory prerequisites for the issuance of a license, and in the event any applicant fails to qualify under the same, license shall be refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year, and if application is for an unexpired portion of any fiscal year, issuance of license may be withheld for such reasonable time as necessary for investigation.

The commissioner may refuse a license to any applicant under the provisions of this act if he shall be of the opinion:

(a) That the applicant is not a suitable person to be licensed; or

(b) That the place to be occupied by the applicant is not a suitable place; or
(c) That the license should not be issued for reason of conduct declared to be unlawful by this act.

Sec. 13. It shall be unlawful:

(a) For any licensee, his, 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 therewith, nonintoxicating beer between the hours of midnight and seven o'clock the following morning on week days or before one o'clock in the afternoon of any Sunday;

(b) For any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane persons, or to any habitual drunkard, or to any person under the age of eighteen years;

(c) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price
20  charged for packages or containers returned by the origi-
21 nal purchaser as a credit on any sale, or from refunding
22 to any purchaser the amount paid or deposited for such
23 containers when title is retained by the vendor;
24  (d) For any brewer or distributor or his, its or their
25 agents, to transport or deliver nonintoxicating beer to any
26 retail licensee on Sunday;
27  (e) For any brewer or distributor to give, furnish, rent
28 or sell any equipment, fixtures, signs or supplies directly
29 or indirectly or through a subsidiary or affiliate to any
30 licensee engaged in selling products of the brewing in-
31 dustry at retail, or to offer any prize, premium, gift, or
32 other similar inducement, except advertising matter of
33 nominal value, to either trade or consumer buyers;
34  (f) For any licensee to transport, sell, deliver or pur-
35 chase any nonintoxicating beer or product of the brewing
36 industry upon which there shall appear a label or other in-
37 formative data which in any manner refers to the alcoholic
38 content of such beer or product of the brewing industry,
39 or upon the label of which there appears the word or
40 words "strong," "full strength," "extra strength," "pre-
war strength,” “high test” or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a statement that the alcoholic content thereof does not exceed three and two-tenths per cent by weight.

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

(h) For any licensee to possess a federal license, tax receipt or other permit, entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks;

(i) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: Provided, however, The provisions of this paragraph shall not apply to the premises of a Class B retailer;

(j) 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 such license or on premises directly or indirectly used in connection therewith:

(k) For any licensee to print, paint or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee;

(l) For any retail licensee to sell or dispense non-intoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this state;

(m) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his 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 wherein such business is located: Provided, That no juke box or other musical instrument of like character shall be played or operated after eleven o'clock P. M., on any week day and at no time on Sunday.
(n) For any person whose license has been revoked, as in this act provided, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

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

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

(q) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises.

Any person who violates any provision of this act or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five dollars, nor more than five hundred
dollars, or imprisoned in the county jail for not less than
thirty days or more than six months, or by both fine and
imprisonment in the discretion of the court. Justices of
the peace shall have concurrent jurisdiction with the
circuit court, and any other courts having criminal juris-
diction in their county, for the trial of all misdemeanors
arising under this act.

Sec. 14. To effectively carry out the provisions of this
act the commissioner shall have the power and authority
to adopt, promulgate, repeal, rescind and amend, in any
manner required, rules, regulations, standards, require-
ments and orders, including the following:
(a) Prescribing records and accounts, pertaining to the
manufacture, distribution and sale of nonintoxicating
beer, to be kept by the licensee;
(b) Requiring the reporting of such information by
licensees as may be necessary for the effective adminis-
tration of this act;
(c) Regulating the branding and labeling of packages,
bottles or other containers in which nonintoxicating
beer may be sold; and, in his discretion, require the col-
lection of all taxes provided for under section six of this
act, by the use of tax paid crowns, lids, and/or stamps;
(d) Prohibiting shipment into the state and sale within
the state of low grade or under-standard nonintoxicating
beer;
(e) Referring to licenses and the issuance and revoca-
tion of the same;
(f) Requiring licensees to keep their places of business
where nonintoxicating beer is sold at retail and the equip-
ment used in connection therewith clean and in a san-
tary condition.

Sec. 15. The commissioner may revoke, or suspend,
the license of any licensee:
(a) For any of the reasons and upon any grounds de-
clared to be unlawful by section thirteen of this act; or
(b) For any reason or ground upon which a license
might have been refused in the first instance had the
facts at the time of the issuance of such license been
known to the commissioner; or
(c) For the violation of any rule, regulation or order
promulgated by the commissioner under authority of
In addition to the grounds for revocation or suspension of a license above set forth, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for revocation or suspension of a license.

Any court of record, except juvenile, domestic relations courts and courts with jurisdiction limited to the trial of criminal offenses, of the county in which the licensed premises are located, shall have concurrent jurisdiction with the commissioner of any proceedings for the revocation or suspension of the license of any retailer, either Class A or Class B, for a violation by such retailer of the provisions of paragraphs (a), (b), (g), (j), (m), (p) or (q), of section thirteen of this act, or for making any false statement concerning any material fact in submitting an application for a retailer's license or for a renewal of such a license.

Sec. 15-a. No such revocation or suspension shall be made by the commissioner unless and until a hearing
shall be held after ten days notice to the licensee of the
time and place of such hearing, which notice shall contain
a statement or specification of the charges, grounds or
reasons for such proposed or contemplated action, and
which shall be served upon the licensee as other notices,
or by registered mail to the address for which license
was issued; at which time and place, so designated in the
notice, the licensee shall have the right to appear and
produce evidence in his behalf, and to be represented by
counsel.

The commissioner shall have authority to summon wit-
nesses in the hearings before him and fees of witnesses
summoned on behalf of the state in proceedings to revoke
or suspend licenses shall be treated as a part of the ex-
penses of administration and enforcement. Such fees
shall be the same as those in similar hearings in the
courts.

If, at the request of the licensee or on his motion, the
hearing shall be continued and shall not take place on
the day fixed by the commissioner in the notice above pro-
vided for, then such licensee's license shall be suspended
until the hearing and decision of the commissioner, and
in the event of revocation or suspension of such license,
upon hearing before the commissioner, the licensee shall
not be permitted to sell beer pending an appeal as pro-
vided by this act. Any person continuing to sell beer
after his license has been suspended or revoked, as herein
before provided, shall be guilty of a misdemeanor and
shall be punished as provided in section thirteen of this
act.

The action of the commissioner in revoking or suspend-
ing a license shall be subject to review, upon certiorari
by the circuit court of Kanawha county, West Virginia,
when such licensee may be aggrieved by such revocation
or suspension. The granting of such review, upon cer-
tiorari, shall be in the sound discretion of the judge of the
circuit court of Kanawha county, and petition for such
review must be filed with said circuit court within a
period of thirty days from and after the date of revocation
or suspension by the commissioner; and any licensee
obtaining an order of review shall be required to pay the
costs and fees incident to transcribing, certifying and
transmitting the records pertaining to such matter to
the circuit court. An application to the supreme court of
appeals of West Virginia for a writ of error from any final
order of the circuit court in any such matter shall be
made within thirty days from and after the entry of such
final order.

All such hearings, upon notice to show cause why license
should not be revoked or suspended, before the commis-
sioner, shall be held in the offices of the commissioner in
the capitol building, Charleston, Kanawha county, West
Virginia, unless otherwise provided in such notice, or
agreed upon between the licensee and the commissioner;
and when such hearing is held elsewhere than in the
commissioner's office, the licensee may be required to
make deposit of the estimated costs of such hearing.

Whenever any licensee has been convicted of any
offense constituting a violation of the laws of this state
or of the United States relating to nonintoxicating beer or
alcoholic liquor, the clerk of the court in which such
licensee has been convicted shall forward to the com-
missioner a certified copy of the order or judgment of
conviction, if such clerk has knowledge that the person
so convicted is a licensee.

Sec. 15-b. Proceedings in any court for the revocation
or suspension of any retailer's license, as provided in sec-
tion fifteen, shall be entitled in the name of the state and
against the licensee and shall be instituted by the filing
with the clerk of said court a complaint signed and
sworn to either by some peace officer of the village, town,
or city in which the licensed premises are situated, or by
any citizen who is, and for at least six months prior
thereto has been, a resident thereof, or if the licensed
premises are situated outside of a village, town or city
then by a peace officer of said county, or by any citizen
who is and for at least six months prior thereto has been,
a resident of said county. Such complaint shall set
forth in detail the facts alleged to constitute the vio-
lation or violations which are the grounds upon which
the revocation or suspension of the license is asked
and the facts stated in said complaint must be shown
to be within the personal knowledge of the affiant or
affiants, or upon the information and belief of such affiant
or affiants. It shall be the duty of the prosecuting attorney of the county, when requested so to do by any person or persons herein authorized to file a complaint, to prepare and draw the complaint for such person or persons.

When such complaint is filed with the clerk of said court he shall immediately call the attention of the court thereto, and it shall be the duty of the court to enter an order fixing a time for the hearing thereon. Thereupon the clerk shall notify the prosecuting attorney of the county of the filing of said complaint and of the date fixed for said hearing. The prosecuting attorney shall forthwith prepare a notice of hearing directed to the licensee which shall state that a complaint has been filed in the office of the clerk of said court, copy of which is attached, and that pursuant to the order entered by the court the same will come on for hearing before said court, stating the time and place where the hearing will be held, and shall be signed by said prosecuting attorney. Said notice shall be served upon the licensee at least ten days prior to the time fixed for hearing if personal service is made. If service be made by mail, such notice shall be
41 deposited in the United States mail not less than twelve
42 days prior to the date set for hearing. It shall be the
43 duty of the prosecuting attorney to diligently and with-
44 out delay prosecute all complaints which have been
45 filed.
46 At the time fixed by said order, or as soon thereafter
47 as the business of the court will permit, the said com-
48 plaint shall come on for trial and hearing. The trial of
49 said complaint for revocation or suspension of the license
50 shall be by the court and without jury. The complaint
51 may be amended at any time before hearing and by leave
52 of court during the hearing. Any amendment shall, how-
53 ever, be verified in like manner as is provided in the
54 original complaint. Such proceeding shall be heard
55 promptly by the court. The pendency of any pro-
56 ceeding before the commissioner for the revocation
57 or suspension of the license shall not stay or be
58 grounds for the continuance of the hearing herein pro-
59 vided to be had before the court. If the court shall find
60 upon the hearing that the offense or offenses charged in
61 the complaint have been established by the evidence,
the court shall order the revocation or suspension of the license. If the court finds that the licensee has not previously violated the law in the operation of his licensed business, and that no license held by him has previously been suspended or revoked, and if it appears to the satisfaction of the court that there are reasonable grounds to expect that the licensee will not again commit the offense or offenses charged in the complaint and that to revoke the license would be unduly severe, then the court may suspend the license for such period of time as the court deems proper: Provided, however, That if the licensee has previously had his license suspended or revoked it shall be mandatory upon the court, upon a finding of guilty, to revoke the said license. After the filing of a complaint with the clerk of the court for revocation or suspension of a license, as hereinbefore provided, the court shall retain jurisdiction to hear and determine such complaint and to enter judgment revoking such license. For the purpose of such hearing and as to the effect of the judgment of the court entered pursuant thereto, the license shall be in full force and effect even
though, the licensee, after the filing of such complaint, may have surrendered his license, or such license may have expired, or the rights of the licensee thereunder may have otherwise terminated. It is the purpose of this paragraph to preclude the licensee and the surety upon his bond from avoiding the effect of judgment of revocation by the court by reason of conditions arising subsequent to the filing of a complaint.

Any court having jurisdiction to entertain a proceeding under the provisions of this chapter for the revocation or suspension of a license may, after the date for hearing has been fixed, enter an order referring the same to a commissioner in chancery, or a special commissioner designated by the court, for the purpose of ascertaining the facts and reporting the same to the court.

It is hereby made the duty of all peace officers to enforce within their jurisdiction the provisions of paragraphs (a), (b), (g), (j), (m), (p) and (q), of section thirteen of this act and they shall promptly investigate all complaints made to them by any citizen relative to any alleged violations by a retailer within their juris-
When any peace officer has knowledge of the fact that any retailer within his jurisdiction has violated any of the foregoing paragraphs of section thirteen, or has made any false statement concerning any material fact in submitting an application for a retailer's license or for a renewal of such a license, it shall be his duty to file immediately a complaint as hereinabove provided. Agents of the commissioner may file complaints with the court or with the commissioner at their option. The failure of any peace officer to perform the duties herein imposed upon him shall be ground for his removal from office in the manner hereinbefore provided for the removal of the prosecuting attorney.

Any person aggrieved by any final order entered by the court under the provisions of this section shall have the right, within sixty days from and after the entry of such final order, to make application to the Supreme Court of Appeals of West Virginia for a writ of error, but the judgment of the court revoking or suspending such li-
The word "court" as used in this section shall mean the court in term or the judge thereof in vacation.

Sec. 16. No license shall be issued to any person who has formerly held a license, under the provisions of this act, which has been revoked by the commissioner or a court of competent jurisdiction, within a period of two years from the date of such revocation; nor shall any license be issued hereunder to any person who was an officer or stockholder of a corporation whose license was revoked as aforesaid, nor to any person who was a member of a partnership or association whose license was revoked as aforesaid, nor to the wife or husband of any person whose license was revoked as aforesaid, within said period of two years from the date of revocation; nor shall any license be issued to any corporation having a stockholder or director who has had a license revoked as aforesaid, within said period of five years from the date of the revocation of such person's license.

Sec. 18. (a) The office of an independent administra-
tor to be known as "West Virginia Nonintoxicating Beer Commissioner" is hereby created and the administration of this act is vested in and shall be exercised by said commissioner, to whom is hereby given all necessary power and authority in the premises.

Whenever, in this article, the word "commissioner" or "tax commissioner" is used, it shall mean the "West Virginia Nonintoxicating Beer Commissioner". All acts herebefore performed by the tax commissioner under the provisions of this act are ratified and confirmed and the commissioner shall succeed to the same position maintained by the tax commissioner in all proceedings and official acts instituted and perfected under the provisions of this act prior to the appointment of the commissioner.

The commissioner shall be appointed by the governor with the advice and consent of the Senate. The term of office for such commissioner shall be six years from the date of his appointment and until his successor shall have been appointed and qualified. The commissioner shall receive an annual salary of six thousand dollars.

(b) The commissioner at the time of his appointment
and qualification shall be a citizen of the United States and a resident of the state of West Virginia; shall have been a qualified voter in the state for a period of at least one year next preceding his appointment and shall be not less than thirty years of age; no commissioner during his period of service as such shall hold any other office under the laws of this state or of the United States.

(c) The commissioner, with the consent of the governor, shall appoint a deputy commissioner who shall have the same qualifications as are required of a commissioner. The deputy commissioner in the absence of the commissioner shall exercise all the powers of the commissioner and generally shall exercise such powers as are delegated to him by the commissioner.

(d) Before entering upon the duties of their respective offices, the commissioner and his deputy shall execute and file with the state treasurer a penal bond in such sum as shall be fixed by the governor, but the amount of such bond shall not be less than five thousand dollars. Penal bonds in such penal sums as shall be fixed by the governor likewise shall be executed and filed with the
state treasurer by such employees of the commissioner as the commissioner with the consent of the governor shall prescribe: *Provided, however, That* no bond of any employee handling moneys collected by the commissioner under the provisions of this act shall be less than five thousand dollars. All such bonds shall be payable to the state of West Virginia and shall be conditioned for the faithful performance of the duties imposed by law or lawful authority upon the commissioner, deputy commissioner, or employees, and further conditioned that the person bonded will not knowingly violate the provisions of any act relating to the manufacture, sale, distribution or transportation of alcohol, alcoholic liquors or nonintoxicating beer. All bonds required to be given under this section, before being accepted by the state treasurer, shall be approved by the attorney general and all such bonds shall be given with surety approved by the attorney general. The cost of such bond shall be borne by the commissioner as part of his operating expense.

(e) In addition to the service of the deputy com-
missioner hereinabove provided for, the commissioner shall appoint an adequate number of competent persons to serve as agents of the commissioner for the purpose of keeping all necessary accounts and records required under the provisions of this article; investigating the books, accounts, records and other papers of retailers, distributors and brewers; investigating applicants for license and the places of business of retailers, distributors and brewers; procuring evidence with respect to violations of the provisions of this act, and particularly for use at hearings held by the commissioner and on proceedings instituted in court for the purpose of revoking or suspending licenses hereunder; and such agents shall perform such other duties as the commissioner may direct. Such agents shall have the right to enter any licensed premises in the state in the performance of their duties at any hour of the day or night when beer is being sold or consumed on such licensed premises. Refusal by any licensee or by any employee of a licensee to permit such agents to enter the licensed premises shall be an addi-
tional cause for revocation or suspension of the license of such licensee by the commissioner. The compensation of such deputy commissioner, employees and agents shall be fixed by the commissioner.

Services rendered the state by clerks, sheriffs, commissioners in chancery and special commissioners, designated by the court, and court reporters and stenographers performing services for said commissioners and fees of witnesses summoned on behalf of the state in proceedings to revoke or suspend retailers' licenses shall be treated as a part of the expenses of administration and enforcement, and such officers and said other persons shall be paid the same fees and charges as would be chargeable for like services performed for an individual; and the compensation of such clerks, sheriffs and other persons, shall be paid out of the amount allocated for the expense of administration and enforcement, after the amount of such fees and other charges shall be certified by the court to the auditor.

Sec. 19. Taxes imposed and collected under the provisions of this article shall be paid to the state treasurer
in the manner provided by law, and credited to the state
fund, general revenue. The expenses of administration
and enforcement shall be paid out of the taxes collected
under this article, but not less than fifteen percent of the
amount so collected shall be allocated for the expenses of
administration and enforcement.

The provisions of this act shall be construed to be
severable and if any of said provisions are held unconsti-
tutional or otherwise invalid, such invalidity shall not
affect the operation of the remaining portions thereof.

Chapter twelve, acts of the Legislature, regular session,
one thousand nine hundred thirty-seven, and this act and
other acts amendatory thereto are hereby designated
article sixteen, chapter eleven of the code of West Vir-
ginia, one thousand nine hundred thirty-one.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles E. Morris
Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect July 1, 1945

Clerk of the Senate

President of the Senate

Speaker House of Delegates

The within bill approved this the 2nd day of March, 1945.

Governor.

Filed in the office of the Secretary of State of West Virginia

MAR 2, 1945

Wm. S. O'Brien,
Secretary of State