

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

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ENROLLED

SENATE BILL No. 89

(By Mr. Vickers, Mr. President)

PASSED February 26 1945

In Effect July 4, 1945 Passage



89  
1945

**ENROLLED**  
**Senate Bill No. 89**  
(BY MR. VICKERS, MR. PRESIDENT)

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

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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:

2 "Nonintoxicating beer" shall mean all cereal malt  
3 beverages or products of the brewing industry commonly  
4 referred to as beer, lager beer, ale, and all other mixtures  
5 and preparations produced by the brewing industry, and  
6 containing not more than three and two-tenths per centum  
7 of alcohol by weight, which are hereby declared to be  
8 nonintoxicating and the word "Liquor" as used in chap-  
9 ter sixty of the code of West Virginia shall not be con-  
10 strued to include or embrace any cereal malt beverage  
11 or product of the brewing industry, or any mixture

12 or preparation of like nature containing not more than  
13 three and two-tenths per centum of alcohol by weight.

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

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

19 "Distributor" shall mean any person, whose chief place  
20 of business is within the state of West Virginia, jobbing  
21 or distributing nonintoxicating beer to retailers at whole-  
22 sale.

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

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

Sec. 3. No person shall manufacture, sell, possess for  
2 sale, transport or distribute nonintoxicating beer except

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-

15 mediately preceding the date of application, shall be fifty  
16 dollars; and except that railroads operating in this state  
17 may dispense nonintoxicating beer upon payment of an  
18 annual license tax of ten dollars for each dining, club,  
19 or buffet car in which the same is dispensed.

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

27 In the case of a Class B retailer, the license fee shall  
28 be five dollars for each place of business. A Class B  
29 license shall authorize the licensee to sell nonintoxicating  
30 beer at retail in bottles, cans or other sealed containers  
31 only, and only for consumption off the licensed premises.  
32 Sales under this license to any person at any one time  
33 must be in less quantities than five gallons. Such license  
34 may be issued only to the proprietor or owner of a grocery  
35 store. For the purpose of this act the term "grocery

36 store" means and includes any retail establishment com-  
37 monly known as a grocery store, or delicatessen, where  
38 food or food products are sold for consumption off the  
39 premises.

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

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

Sec. 5. In addition to furnishing the information re-  
2 quired by this act, each brewer or distributor applying  
3 for a license under this act shall furnish, as prerequisite  
4 to a license, a bond with some solvent surety company  
5 as surety, to be approved by the West Virginia nonin-  
6 toxicating beer commissioner, payable to the state of  
7 West Virginia, conditioned for the payment of any and  
8 all additional taxes accruing during the period of such  
9 license, and conditioned further for the faithful ob-  
10 servance of the laws of the state of West Virginia with  
11 respect to the sale, transportation, storage and distribution  
12 of nonintoxicating beer; which said bond shall be forfeited

13 to the state upon the revocation of the license of any  
14 such brewer or distributor. The amount of such bond,  
15 in the case of a brewer, shall be not less than five thou-  
16 sand dollars, nor more than ten thousand dollars, and  
17 in the case of a distributor, not less than two thousand  
18 dollars, nor more than five thousand dollars for each  
19 place of business licensed and conducted within the  
20 state, the amount of such bond, between the minimum and  
21 maximum amounts, to be determined in the discretion of  
22 the commissioner. In the case of brewers shipping non-  
23 intoxicating beer into the state, they must also furnish a  
24 bond in a penalty of not less than five thousand dollars  
25 nor more than ten thousand dollars conditioned for the  
26 fulfillment and observation of state laws.

27 Each and every Class A retail dealer, in addition to  
28 furnishing the information required by this act, shall  
29 furnish as prerequisite to obtaining a license, a bond  
30 with some solvent surety company as surety, to be ap-  
31 proved by the commissioner, payable to the state of  
32 West Virginia, in an amount not less than two hundred  
33 dollars, nor more than five hundred dollars, within the

34 discretion of the commissioner. All such bonds shall be  
35 conditioned for the faithful observance of the laws of the  
36 state of West Virginia with respect to the distribution,  
37 sale and dispensing of nonintoxicating beer, and shall be  
38 forfeited to the state in the full amount of said bond upon  
39 the revocation of the license of any such retail dealer.  
40 Such money received by the state shall be credited to  
41 the state fund, general revenue.

42 Upon the revocation of the license of any Class A  
43 retail dealer by the commissioner or by any court of  
44 competent jurisdiction, the commissioner or the clerk  
45 of said court shall notify the prosecuting attorney of the  
46 county wherein such retail dealer's place of business  
47 is located, or the prosecuting attorney of the county  
48 wherein the licensee resides, of such revocation and  
49 upon receipt of said notice it shall be the duty of such  
50 prosecuting attorney forthwith to institute appropriate  
51 proceedings for the collection of the full amount of said  
52 bond. Upon request of such prosecuting attorney, the  
53 commissioner shall deliver the bond to him. Wilful re-  
54 fusal without just cause therefor by the prosecuting

55 attorney to perform said duty hereby imposed shall sub-  
56 ject him to removal from office by the circuit court of  
57 the county for which said prosecuting attorney was  
58 elected upon proper proceedings and proof in the manner  
59 provided by law.

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

5 (a) The name and residence of the applicant, how  
6 long he has resided there, that he has been a resident  
7 of the state for a period of two years next preceding  
8 the date of his application, that he is twenty-one years  
9 of age, and, if a firm, association, partnership or corpora-  
10 tion, the residence of the members or officers for a period  
11 of two years next preceding the date of such application:  
12 *Provided*, That if any person, firm, partnership, associa-  
13 tion or corporation applies for a license as a distributor,  
14 such person, or in the case of a firm, partnership, associa-  
15 tion, or corporation, the members or officers thereof, shall  
16 state under oath that he or they have been bona fide

17 residents of the state for four years next preceding the  
18 date of such application;

19 (b) The place of birth of applicant and that he is a  
20 citizen of the United States and, if a naturalized citizen,  
21 when and where naturalized; and, if a corporation, or-  
22 ganized or authorized to do business under the laws of  
23 the state, when and where incorporated, with the names  
24 and address of each officer; that each officer is a citizen  
25 of the United States and a person of good moral character;  
26 and if a firm, association or partnership, the place of  
27 birth of each member of the firm, association or partner-  
28 ship, that each member is a citizen of the United States  
29 and if a naturalized citizen, when and where naturalized,  
30 each of whom must qualify and sign the application:  
31 *Provided, however,* That the requirements as to residence  
32 shall not apply to the officers of a corporation which  
33 shall apply for a Class B retailer's license, but the officer,  
34 agent, or employee who shall manage and be in charge  
35 of the licensed premises shall possess all the qualifica-  
36 tions required of an individual applicant for a retailer's  
37 license. including the requirements as to residence:

38 (c) The particular place for which the license is de-  
39 sired and a detailed description thereof;

40 (d) The name of the owner of the building and, if the  
41 owner is not the applicant, that such applicant is the  
42 actual and bona fide lessee of the premises;

43 (e) That the place or building in which it is proposed  
44 to do business conforms to all laws of health and fire  
45 regulations applicable thereto, and is a safe and proper  
46 place or building;

47 (f) That the applicant has never been convicted of a  
48 felony, or a violation of the liquor laws either federal  
49 or state;

50 (g) That the applicant is the only person in any man-  
51 ner pecuniarily interested in the business so asked to  
52 be licensed and that no other person shall be in any  
53 manner pecuniarily interested therein during the con-  
54 tinuance of the license;

55 (h) That the applicant has not during five years next  
56 immediately preceding the date of said application had  
57 a nonintoxicating beer license revoked, nor during the  
58 same period been convicted of any criminal offense.

59 The foregoing provisions and requirements are man-  
60 datory prerequisites for the issuance of a license, and  
61 in the event any applicant fails to qualify under the  
62 same, license shall be refused. In addition to the in-  
63 formation furnished in any application, the commissioner  
64 may make such additional and independent investigation  
65 of each applicant, and of the place to be occupied, as  
66 deemed necessary or advisable; and for this reason each  
67 and all applications, with license fee and bond, must  
68 be filed thirty days prior to the beginning of any fiscal  
69 year, and if application is for an unexpired portion of  
70 any fiscal year, issuance of license may be withheld for  
71 such reasonable time as necessary for investigation.

*OK by M.S.H.*

72 The commissioner may refuse a license to any appli-  
73 cant under the provisions of this act if he shall be of the  
74 opinion:

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

77 (b) That the place to be occupied by the applicant  
78 is not a suitable place; or

79 (c) That the license should not be issued for reason  
80 of conduct declared to be unlawful by this act.

Sec. 13. It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents  
3 or employees to sell, give or dispense, or any individual  
4 to drink or consume, in or on any licensed premises or in  
5 any rooms directly connected therewith, nonintoxicating  
6 beer between the hours of midnight and seven o'clock the  
7 following morning on week days or before one o'clock in  
8 the afternoon of any Sunday;

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

14 (c) For any distributor to sell or offer to sell, or any  
15 retailer to purchase or receive, any nonintoxicating beer  
16 except for cash; and no right of action shall exist to collect  
17 any claims for credit extended contrary to the provisions  
18 of this clause. Nothing herein contained shall prohibit a  
19 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-

41 war strength," "high test" or other similar expressions  
42 bearing upon the alcoholic content of such product of  
43 the brewing industry, or which refers in any manner to  
44 the original alcoholic strength, extract or balling proof  
45 from which such beverage was produced, except that  
46 such label shall contain a statement that the alcoholic  
47 content thereof does not exceed three and two-tenths per  
48 cent by weight.

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

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

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

61 (j) For any licensee to manufacture, import, sell, trade,

62 barter, possess, or acquiesce in the sale, possession or  
63 consumption of any alcoholic liquors on the premises cov-  
64 ered by such license or on premises directly or indirectly  
65 used in connection therewith:

66 (k) For any licensee to print, paint or place upon the  
67 door, window, or in any other public place in or about  
68 the premises, the word "saloon" or word of similar char-  
69 acter or nature, or for the word "saloon" or similar words  
70 to be used in any advertisement by the licensee;

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

75 (m) For any licensee to permit loud, boisterous or dis-  
76 orderly conduct of any kind upon his premises or to permit  
77 the use of loud musical instruments if either or any of the  
78 same may disturb the peace and quietude of the com-  
79 munity wherein such business is located: *Provided, That*  
80 no juke box or other musical instrument of like character  
81 shall be played or operated after eleven o'clock P. M., on  
82 any week day and at no time on Sunday.

83 (n) For any person whose license has been revoked, as  
84 in this act provided, to obtain employment with any  
85 retailer within the period of one year from the date of  
86 such revocation, or for any retailer to employ knowingly  
87 any such person within such time;

88 (o) For any distributor to sell, possess for sale, trans-  
89 port or distribute nonintoxicating beer except in the  
90 original container;

91 (p) For any licensee to permit any act to be done upon  
92 the licensed premises, the commission of which consti-  
93 tutes a crime under the laws of this state;

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

96 Any person who violates any provision of this act or  
97 who makes any false statement concerning any material  
98 fact in submitting application for license or for a renewal  
99 of a license or in any hearing concerning the revocation  
100 thereof, or who commits any of the acts herein declared  
101 to be unlawful, shall be guilty of a misdemeanor, and  
102 shall be punished for each offense by a fine of not less  
103 than twenty-five dollars, nor more than five hundred

104 dollars, or imprisoned in the county jail for not less than  
105 thirty days or more than six months, or by both fine and  
106 imprisonment in the discretion of the court. Justices of  
107 the peace shall have concurrent jurisdiction with the  
108 circuit court, and any other courts having criminal juris-  
109 diction in their county, for the trial of all misdemeanors  
110 arising under this act.

Sec. 14. To effectively carry out the provisions of this  
2 act the commissioner shall have the power and authority  
3 to adopt, promulgate, repeal, rescind and amend, in any  
4 manner required, rules, regulations, standards, require-  
5 ments and orders, including the following:

6 (a) Prescribing records and accounts, pertaining to the  
7 manufacture, distribution and sale of nonintoxicating  
8 beer, to be kept by the licensee;

9 (b) Requiring the reporting of such information by  
10 licensees as may be necessary for the effective adminis-  
11 tration of this act;

12 (c) Regulating the branding and labeling of packages,  
13 bottles or other containers in which nonintoxicating  
14 beer may be sold; and, in his discretion, require the col-

15 lection of all taxes provided for under section six of this  
16 act, by the use of tax paid crowns, lids, and/or stamps;

17 (d) Prohibiting shipment into the state and sale within  
18 the state of low grade or under-standard nonintoxicating  
19 beer;

20 (e) Referring to licenses and the issuance and revoca-  
21 tion of the same;

22 (f) Requiring licensees to keep their places of business  
23 where nonintoxicating beer is sold at retail and the equip-  
24 ment used in connection therewith clean and in a sani-  
25 tary condition.

Sec. 15. The commissioner may revoke, or suspend,  
2 the license of any licensee:

3 (a) For any of the reasons and upon any grounds de-  
4 clared to be unlawful by section thirteen of this act; or

5 (b) For any reason or ground upon which a license  
6 might have been refused in the first instance had the  
7 facts at the time of the issuance of such license been  
8 known to the commissioner; or

9 (c) For the violation of any rule, regulation or order  
10 promulgated by the commissioner under authority of

11 this article.

12 In addition to the grounds for revocation or suspension  
13 of a license above set forth, conviction of the licensee  
14 of any offense constituting a violation of the laws of this  
15 state or of the United States relating to nonintoxicating  
16 beer or alcoholic liquor shall be mandatory grounds for  
17 revocation or suspension of a license.

18 Any court of record, except juvenile, domestic relations  
19 courts and courts with jurisdiction limited to the trial of  
20 criminal offenses, of the county in which the licensed  
21 premises are located, shall have concurrent jurisdiction  
22 with the commissioner of any proceedings for the revo-  
23 cation or suspension of the license of any retailer, either  
24 Class A or Class B, for a violation by such retailer of the  
25 provisions of paragraphs (a), (b), (g), (j), (m), (p) or  
26 (q), of section thirteen of this act, or for making any  
27 false statement concerning any material fact in sub-  
28 mitting an application for a retailer's license or for a  
29 renewal of such a license.

Sec. 15-a. No such revocation or suspension shall be  
2 made by the commissioner unless and until a hearing

3 shall be held after ten days notice to the licensee of the  
4 time and place of such hearing, which notice shall contain  
5 a statement or specification of the charges, grounds or  
6 reasons for such proposed or contemplated action, and  
7 which shall be served upon the licensee as other notices,  
8 or by registered mail to the address for which license  
9 was issued; at which time and place, so designated in the  
10 notice, the licensee shall have the right to appear and  
11 produce evidence in his behalf, and to be represented by  
12 counsel.

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

20 If, at the request of the licensee or on his motion, the  
21 hearing shall be continued and shall not take place on  
22 the day fixed by the commissioner in the notice above pro-  
23 vided for, then such licensee's license shall be suspended

24 until the hearing and decision of the commissioner, and  
25 in the event of revocation or suspension of such license,  
26 upon hearing before the commissioner, the licensee shall  
27 not be permitted to sell beer pending an appeal as pro-  
28 vided by this act. Any person continuing to sell beer  
29 after his license has been suspended or revoked, as herein  
30 before provided, shall be guilty of a misdemeanor and  
31 shall be punished as provided in section thirteen of this  
32 act.

33 The action of the commissioner in revoking or suspend-  
34 ing a license shall be subject to review, upon certiorari  
35 by the circuit court of Kanawha county, West Virginia,  
36 when such licensee may be aggrieved by such revocation  
37 or suspension. The granting of such review, upon cer-  
38 tiorari, shall be in the sound discretion of the judge of the  
39 circuit court of Kanawha county, and petition for such  
40 review must be filed with said circuit court within a  
41 period of thirty days from and after the date of revocation  
42 or suspension by the commissioner; and any licensee  
43 obtaining an order of review shall be required to pay the  
44 costs and fees incident to transcribing, certifying and

45 transmitting the records pertaining to such matter to  
46 the circuit court. An application to the supreme court of  
47 appeals of West Virginia for a writ of error from any final  
48 order of the circuit court in any such matter shall be  
49 made within thirty days from and after the entry of such  
50 final order.

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

60 Whenever any licensee has been convicted of any  
61 offense constituting a violation of the laws of this state  
62 or of the United States relating to nonintoxicating beer or  
63 alcoholic liquor, the clerk of the court in which such  
64 licensee has been convicted shall forward to the com-  
65 missioner a certified copy of the order or judgment of

66 conviction, if such clerk has knowledge that the person  
67 so convicted is a licensee.

Sec. 15-b. Proceedings in any court for the revocation  
2 or suspension of any retailer's license, as provided in sec-  
3 tion fifteen, shall be entitled in the name of the state and  
4 against the licensee and shall be instituted by the filing  
5 with the clerk of said court a complaint signed and  
6 sworn to either by some peace officer of the village, town,  
7 or city in which the licensed premises are situated, or by  
8 any citizen who is, and for at least six months prior  
9 thereto has been, a resident thereof, or if the licensed  
10 premises are situated outside of a village, town or city  
11 then by a peace officer of said county, or by any citizen  
12 who is and for at least six months prior thereto has been,  
13 a resident of said county. Such complaint shall set  
14 forth in detail the facts alleged to constitute the vio-  
15 lation or violations which are the grounds upon which  
16 the revocation or suspension of the license is asked  
17 and the facts stated in said complaint must be shown  
18 to be within the personal knowledge of the affiant or  
19 affiants, or upon the information and belief of such affiant

20 or affiants. It shall be the duty of the prosecuting attorney  
21 of the county, when requested so to do by any person or  
22 persons herein authorized to file a complaint, to prepare  
23 and draw the complaint for such person or persons.

24 When such complaint is filed with the clerk of said  
25 court he shall immediately call the attention of the court  
26 thereto, and it shall be the duty of the court to enter an  
27 order fixing a time for the hearing thereon. Thereupon  
28 the clerk shall notify the prosecuting attorney of the  
29 county of the filing of said complaint and of the date fixed  
30 for said hearing. The prosecuting attorney shall forth-  
31 with prepare a notice of hearing directed to the licensee  
32 which shall state that a complaint has been filed in the  
33 office of the clerk of said court, copy of which is attached,  
34 and that pursuant to the order entered by the court the  
35 same will come on for hearing before said court, stat-  
36 ing the time and place where the hearing will be held,  
37 and shall be signed by said prosecuting attorney. Said  
38 notice shall be served upon the licensee at least ten days  
39 prior to the time fixed for hearing if personal service is  
40 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,

62 the court shall order the revocation or suspension of the  
63 license. If the court finds that the licensee has not  
64 previously violated the law in the operation of his licensed  
65 business, and that no license held by him has previously  
66 been suspended or revoked, and if it appears to the  
67 satisfaction of the court that there are reasonable grounds  
68 to expect that the licensee will not again commit the  
69 offense or offenses charged in the complaint and that  
70 to revoke the license would be unduly severe, then the  
71 court may suspend the license for such period of time as  
72 the court deems proper: *Provided, however,* That if the  
73 licensee has previously had his license suspended or re-  
74 voked it shall be mandatory upon the court, upon a  
75 finding of guilty, to revoke the said license. After the  
76 filing of a complaint with the clerk of the court for  
77 revocation or suspension of a license, as hereinbefore pro-  
78 vided, the court shall retain jurisdiction to hear and de-  
79 termine such complaint and to enter judgment revoking  
80 such license. For the purpose of such hearing and as to  
81 the effect of the judgment of the court entered pursuant  
82 thereto, the license shall be in full force and effect even

83 though, the licensee, after the filing of such complaint,  
84 may have surrendered his license, or such license may  
85 have expired, or the rights of the licensee thereunder  
86 may have otherwise terminated. It is the purpose of this  
87 paragraph to preclude the licensee and the surety upon  
88 his bond from avoiding the effect of judgment of revoca-  
89 tion by the court by reason of conditions arising subse-  
90 quent to the filing of a complaint.

91 Any court having jurisdiction to entertain a proceed-  
92 ing under the provisions of this chapter for the revoca-  
93 tion or suspension of a license may, after the date for  
94 hearing has been fixed, enter an order referring the same  
95 to a commissioner in chancery, or a special commissioner  
96 designated by the court, for the purpose of ascertaining  
97 the facts and reporting the same to the court.

98 It is hereby made the duty of all peace officers to en-  
99 force within their jurisdiction the provisions of para-  
100 graphs (a), (b), (g), (j), (m), (p) and (q), of section  
101 thirteen of this act and they shall promptly investigate  
102 all complaints made to them by any citizen relative to  
103 any alleged violations by a retailer within their juris-

104 diction of the foregoing paragraphs of section thirteen.  
105 When any peace officer has knowledge of the fact that  
106 any retailer within his jurisdiction has violated any of  
107 the foregoing paragraphs of section thirteen, or has made  
108 any false statement concerning any material fact in sub-  
109 mitting an application for a retailer's license or for a  
110 renewal of such a license, it shall be his duty to file im-  
111 mediately a complaint as hereinabove provided. Agents  
112 of the commissioner may file complaints with the court  
113 or with the commissioner at their option. The failure  
114 of any peace officer to perform the duties herein imposed  
115 upon him shall be ground for his removal from office in  
116 the manner hereinbefore provided for the removal of the  
117 prosecuting attorney.

118 Any person aggrieved by any final order entered by the  
119 court under the provisions of this section shall have the  
120 right, within sixty days from and after the entry of such  
121 final order, to make application to the Supreme Court of  
122 Appeals of West Virginia for a writ of error, but the  
123 judgment of the court revoking or suspending such li-

124 cense shall not be superseded or stayed during the pend-  
125 ency of an appeal therefrom.

126 The word "court" as used in this section shall mean  
127 the court in term or the judge thereof in vacation.

Sec. 16. No license shall be issued to any person who  
2 has formerly held a license, under the provisions of this  
3 act, which has been revoked by the commissioner or a  
4 court of competent jurisdiction, within a period of two  
5 years from the date of such revocation; nor shall any  
6 license be issued hereunder to any person who was an  
7 officer or stockholder of a corporation whose license was  
8 revoked as aforesaid, nor to any person who was a mem-  
9 ber of a partnership or association whose license was  
10 revoked as aforesaid, nor to the wife or husband of any  
11 person whose license was revoked as aforesaid, within  
12 said period of two years from the date of revocation;  
13 nor shall any license be issued to any corporation having  
14 a stockholder or director who has had a license revoked  
15 as aforesaid, within said period of five years from the  
16 date of the revocation of such person's license.

Sec. 18. (a) The office of an independent administra-

2 tor to be known as "West Virginia Nonintoxicating Beer  
3 Commissioner" is hereby created and the administration  
4 of this act is vested in and shall be exercised by said com-  
5 missioner, to whom is hereby given all necessary power  
6 and authority in the premises.

7 Whenever, in this article, the word "commissioner" or  
8 "tax commissioner" is used, it shall mean the "West Vir-  
9 ginia Nonintoxicating Beer Commissioner". All acts here-  
10 tofore performed by the tax commissioner under the pro-  
11 visions of this act are ratified and confirmed and the  
12 commissioner shall succeed to the same position main-  
13 tained by the tax commissioner in all proceedings and of-  
14 ficial acts instituted and perfected under the provisions  
15 of this act prior to the appointment of the commissioner.  
16 The commissioner shall be appointed by the governor  
17 with the advice and consent of the Senate. The term of  
18 office for such commissioner shall be six years from the  
19 date of his appointment and until his successor shall have  
20 been appointed and qualified. The commissioner shall  
21 receive an annual salary of six thousand dollars.

22 (b) The commissioner at the time of his appointment

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

30 (c) The commissioner, with the consent of the gov-  
31 ernor, shall appoint a deputy commissioner who shall  
32 have the same qualifications as are required of a com-  
33 missioner. The deputy commissioner in the absence of  
34 the commissioner shall exercise all the powers of the  
35 commissioner and generally shall exercise such powers  
36 as are delegated to him by the commissioner.

37 (d) Before entering upon the duties of their respective  
38 offices, the commissioner and his deputy shall execute and  
39 file with the state treasurer a penal bond in such sum  
40 as shall be fixed by the governor, but the amount of such  
41 bond shall not be less than five thousand dollars. Penal  
42 bonds in such penal sums as shall be fixed by the  
43 governor likewise shall be executed and filed with the

44 state treasurer by such employees of the commissioner  
45 as the commissioner with the consent of the governor  
46 shall prescribe: *Provided, however,* That no bond of any  
47 employee handling moneys collected by the commissioner  
48 under the provisions of this act shall be less than five  
49 thousand dollars. All such bonds shall be payable to the  
50 state of West Virginia and shall be conditioned for the  
51 faithful performance of the duties imposed by law or  
52 lawful authority upon the commissioner, deputy com-  
53 missioner, or employees, and further conditioned that  
54 the person bonded will not knowingly violate the  
55 provisions of any act relating to the manufacture, sale,  
56 distribution or transportation of alcohol, alcoholic  
57 liquors or nonintoxicating beer. All bonds required  
58 to be given under this section, before being accepted by  
59 the state treasurer, shall be approved by the attorney  
60 general and all such bonds shall be given with surety  
61 approved by the attorney general. The cost of such  
62 bond shall be borne by the commissioner as part of his  
63 operating expense.

64 (e) In addition to the service of the deputy com-

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65 missioner hereinabove provided for, the commissioner  
66 shall appoint an <sup>of</sup>adequate number of competent persons  
67 to serve as agents of the commissioner for the purpose  
68 of keeping all necessary accounts and records required  
69 under the provisions of this article; investigating the  
70 books, accounts, records and other papers of retailers, dis-  
71 tributors and brewers; investigating applicants for license  
72 and the places of business of retailers, distributors and  
73 brewers; procuring evidence with respect to violations of  
74 the provisions of this act, and particularly for use at  
75 hearings held by the commissioner and on proceedings  
76 instituted in court for the purpose of revoking or sus-  
77 pending licenses hereunder; and such agents shall per-  
78 form such other duties as the commissioner may direct.  
79 Such agents shall have the right to enter any licensed  
80 premises in the state in the performance of their duties  
81 at any hour of the day or night when beer is being sold  
82 or consumed on such licensed premises. Refusal by any  
83 licensee or by any employee of a licensee to permit such  
84 agents to enter the licensed premises shall be an addi-

85 tional cause for revocation or suspension of the license  
86 of such licensee by the commissioner. The compensation  
87 of such deputy commissioner, employees and agents shall  
88 be fixed by the commissioner.

89 Services rendered the state by clerks, sheriffs, commis-  
90 sioners in chancery and special commissioners, designated  
91 by the court, and court reporters and stenographers per-  
92 forming services for said commissioners and fees of wit-  
93 nesses summoned on behalf of the state in proceedings  
94 to revoke or suspend retailers' licenses shall be treated as  
95 a part of the expenses of administration and enforcement,  
96 and such officers and said other persons shall be paid the  
97 same fees and charges as would be chargeable for like  
98 services performed for an individual; and the compensa-  
99 tion of such clerks, sheriffs and other persons, shall be  
100 paid out of the amount allocated for the expense of ad-  
101 ministration and enforcement, after the amount of such  
102 fees and other charges shall be certified by the court to  
103 the auditor.

Sec. 19. Taxes imposed and collected under the pro-  
2 visions of this article shall be paid to the state treasurer

3 in the manner provided by law, and credited to the state  
4 fund, general revenue. The expenses of administration  
5 and enforcement shall be paid out of the taxes collected  
6 under this article, but not less than fifteen percent of the  
7 amount so collected shall be allocated for the expenses of  
8 administration and enforcement.

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

13 Chapter twelve, acts of the Legislature, regular session,  
14 one thousand nine hundred thirty-seven, and this act and  
15 other acts amendatory thereto are hereby designated  
16 article sixteen, chapter eleven of the code of West Vir-  
17 ginia, one thousand nine hundred thirty-one.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles C. Morris  
Chairman Senate Committee

J. Allen Hunter Jr.  
Chairman House Committee

Originated in the Senate

Takes effect July 1, 1945 passage

J. Howard Hayes  
Clerk of the Senate

J. R. Kliff  
Clerk of the House of Delegates

Donald M. Vickers  
President of the Senate

John E. Capps  
Speaker House of Delegates

The within Approved this the 2<sup>nd</sup>  
day of March, 1945.

Wm. S. O'Brien  
Governor.

Filed in the office of the Secretary of State  
of West Virginia MAR 2 1945

Wm. S. O'BRIEN,  
Secretary of State

