WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
SENATE BILL NO. 364
(By Mr. Husie)

PASSED February 26, 1980
In Effect ninety days from Passage
AN ACT to amend and reenact sections two, three and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article one, chapter sixty of said code, all relating to changing the definition of nonintoxicating beer to a product containing not more than four and two-tenths percent of alcohol by weight, or six percent by volume.

Be it enacted by the Legislature of West Virginia:

That sections two, three and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article one, chapter sixty of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-2. Definitions.

1 For the purpose of this article:
2 "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 four and two-tenths percent of alcohol by weight, or six percent by volume, which-
8 ever is greater, which are hereby declared to be non-
9 intoxicating and the word "liquor" as used in chapter
sixty of the code of West Virginia shall not be construed

to include or embrace nonintoxicating beer.

"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 whole-

sale.

"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.

§11-16-3. State license required; alcoholic content of beer

manufactured for sale without state.

No person shall manufacture, sell, possess for sale,

transport or distribute nonintoxicating beer except in

accordance with the provisions of this article, and after

first obtaining a state license therefor, as hereinafter

provided: Provided, however, That nothing herein con-

tained shall prohibit any brewer located within the state

from manufacturing or transporting for sale without the

state beer of an alcoholic strength greater than that of

nonintoxicating beer.

§11-16-13. Unlawful acts of licensees; penalties.

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, nonintoxicat-

ing beer on weekdays between the hours of two o'clock

a.m., and seven o'clock a.m., or between the hours of two

o'clock a.m., and one o'clock p.m., on any Sunday, except
in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(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 person, 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 subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

d) For any brewer or distributor or his, its or their agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday;

e) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies 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 of nominal value, to either trade or consumer buyers: Provided, That nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas;

(f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar 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 state the alcoholic content thereof;
(g) For any licensee to permit in his premises any
lewd, immoral or improper entertainment, conduct or
practice;
(h) For any licensee except the holder of a license to
operate a private club issued under the provisions of
article seven, chapter sixty of this code, 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 occupy-
ing such premises. The interior of all licensed premises
shall be adequately lighted at all times: Provided, That
provisions of this subdivision shall not apply to the
premises of a Class B retailer or to the premises of a
private club licensed under the provisions of article
seven, chapter sixty of this code;
(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 in-
directly used in connection therewith: Provided, That
the prohibitions contained in this subdivision with
respect to the selling or possessing or to the acquiescence
in the sale, possession or consumption of alcoholic liquors
shall not be applicable with respect to the holder of a
license to operate a private club issued under the provi-
sions of article seven, chapter sixty of this code;
(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 licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(n) For any person whose license has been revoked, as in this article 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;

(r) For any licensee, his, its or their servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully pre-
Any person who violates any provision of this article 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 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 jurisdiction in their county, for the trial of all misdemeanors arising under this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1. For the purposes of this chapter:

2. "Alcohol" shall mean ethyl alcohol whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.

3. "Beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

4. "Nonintoxicating beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by section two, article sixteen, chapter eleven.

5. "Wine" shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

6. "Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other
substances in solution, and includes brandy, rum, whiskey, cordials and gin.

"Alcoholic liquor" shall include alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

"Original package" shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

"Sale" shall mean any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by principal, proprietor, agent or employee.

"Selling" shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.

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

"Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

"Manufacturer" shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

"Brewery" shall mean an establishment where beer is manufactured or in any way prepared.

"Winery" shall mean an establishment where wine is manufactured or in any way prepared.

"Distillery" shall mean an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

"Public place" shall mean any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, and hotel dining rooms and lobbies, and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement.

"State liquor store" shall mean a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.
"An agency" shall mean a drugstore, grocery store or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia liquor control commission.

"Department" shall mean the organization through which the commission exercises powers imposed upon it by this chapter.

"Commission" shall mean the West Virginia liquor control commission.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 29

day of February, 1980.

Governor