

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1980

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**ENROLLED**

SENATE BILL NO. 364

(By Mr. Kraic)

—•—  
PASSED February 26, 1980

In Effect ninty days from Passage

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No. 364

**ENROLLED**  
**Senate Bill No. 364**  
(By MR. KUSIC)

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[Passed February 26, 1980; in effect ninety days from passage.]

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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
- 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 four and two-tenths percent
- 7 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

10 sixty of the code of West Virginia shall not be construed  
11 to include or embrace nonintoxicating beer.

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

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

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

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

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

**§11-16-3. State license required; alcoholic content of beer  
manufactured for sale without state.**

1 No person shall manufacture, sell, possess for sale,  
2 transport or distribute nonintoxicating beer except in  
3 accordance with the provisions of this article, and after  
4 first obtaining a state license therefor, as hereinafter  
5 provided: *Provided, however,* That nothing herein con-  
6 tained shall prohibit any brewer located within the state  
7 from manufacturing or transporting for sale without the  
8 state beer of an alcoholic strength greater than that of  
9 nonintoxicating beer.

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

1 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  
5 in any rooms directly connected therewith, nonintoxicat-  
6 ing beer on weekdays between the hours of two o'clock  
7 a.m., and seven o'clock a.m., or between the hours of two  
8 o'clock a.m., and one o'clock p.m., on any Sunday, except

9 in private clubs licensed under the provisions of article  
10 seven, chapter sixty of this code, where the hours shall  
11 conform with the hours of sale of alcoholic liquors;

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

17 (c) For any distributor to sell or offer to sell, or any  
18 retailer to purchase or receive, any nonintoxicating beer  
19 except for cash; and no right of action shall exist to col-  
20 lect any claims for credit extended contrary to the provi-  
21 sions of this subdivision. Nothing herein contained shall  
22 prohibit a licensee from crediting to a purchaser the ac-  
23 tual price charged for packages or containers returned by  
24 the original purchaser as a credit on any sale, or from re-  
25 funding to any purchaser the amount paid or deposited for  
26 such containers when title is retained by the vendor;

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

30 (e) For any brewer or distributor to give, furnish,  
31 rent or sell any equipment, fixtures, signs or supplies  
32 directly or indirectly or through a subsidiary or affiliate  
33 to any licensee engaged in selling products of the brew-  
34 ing industry at retail, or to offer any prize, premium,  
35 gift, or other similar inducement, except advertising  
36 matter of nominal value, to either trade or consumer  
37 buyers: *Provided*, That nothing contained herein shall  
38 prohibit a distributor from offering for sale or renting  
39 tanks of carbonic gas;

40 (f) For any licensee to transport, sell, deliver or pur-  
41 chase any nonintoxicating beer or product of the brewing  
42 industry upon which there shall appear a label or other  
43 informative data which in any manner refers to the  
44 alcoholic content of such beer or product of the brewing  
45 industry, or upon the label of which there appears the  
46 word or words "strong," "full strength," "extra strength,"  
47 "prewar strength," "high test" or other similar expres-  
48 sions bearing upon the alcoholic content of such product

49 of the brewing industry, or which refers in any manner  
50 to the original alcoholic strength, extract or balling  
51 proof from which such beverage was produced, except  
52 that such label shall state the alcoholic content thereof;

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

56 (h) For any licensee except the holder of a license to  
57 operate a private club issued under the provisions of  
58 article seven, chapter sixty of this code, to possess a  
59 federal license, tax receipt or other permit entitling,  
60 authorizing or allowing such licensee to sell liquor or  
61 alcoholic drinks;

62 (i) For any licensee to obstruct the view of the interior  
63 of his premises by enclosure, lattice, drapes or any means  
64 which would prevent plain view of the patrons occupy-  
65 ing such premises. The interior of all licensed premises  
66 shall be adequately lighted at all times: *Provided*, That  
67 provisions of this subdivision shall not apply to the  
68 premises of a Class B retailer or to the premises of a  
69 private club licensed under the provisions of article  
70 seven, chapter sixty of this code;

71 (j) For any licensee to manufacture, import, sell, trade,  
72 barter, possess, or acquiesce in the sale, possession or  
73 consumption of any alcoholic liquors on the premises  
74 covered by such license or on premises directly or in-  
75 directly used in connection therewith: *Provided*, That  
76 the prohibitions contained in this subdivision with  
77 respect to the selling or possessing or to the acquiescence  
78 in the sale, possession or consumption of alcoholic liquors  
79 shall not be applicable with respect to the holder of a  
80 license to operate a private club issued under the provi-  
81 sions of article seven, chapter sixty of this code;

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

87 (l) For any retail licensee to sell or dispense non-  
88 intoxicating beer purchased or acquired from any source

89 other than a licensed distributor or brewer under the  
90 laws of this state;

91 (m) For any licensee to permit loud, boisterous or  
92 disorderly conduct of any kind upon his premises or to  
93 permit the use of loud musical instruments if either or  
94 any of the same may disturb the peace and quietude of  
95 the community wherein such business is located:  
96 *Provided*, That no licensee shall have in connection with  
97 his place of business any loudspeaker located on the out-  
98 side of the licensed premises that broadcasts or carries  
99 music of any kind;

100 (n) For any person whose license has been revoked,  
101 as in this article provided, to obtain employment with  
102 any retailer within the period of one year from the date  
103 of such revocation, or for any retailer to employ know-  
104 ingly any such person within such time;

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

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

111 (q) For any Class B retailer to permit the consump-  
112 tion of nonintoxicating beer upon his licensed premises;

113 (r) For any licensee, his, its or their servants, agents,  
114 or employees, or for any licensee by or through such  
115 servants, agents or employees, to allow, suffer or permit  
116 any person under the age of eighteen years to loiter in or  
117 upon any licensed premises; except, however, that the  
118 provisions of this subdivision shall not apply where such  
119 person under the age of eighteen years, is in, or upon  
120 such premises in the immediate company of his or her  
121 parent or parents, or where and while such person under  
122 the age of eighteen years is in, on or upon such premises  
123 for the purpose of and actually making a lawful pur-  
124 chase of any items or commodities therein sold, or for  
125 the purchase of and actually receiving any lawful service  
126 therein rendered, including the consumption of any  
127 item of food, drink or soft drink therein lawfully pre-

128 pared and served or sold for consumption on such  
129 premises.

130 Any person who violates any provision of this article or  
131 who makes any false statement concerning any material  
132 fact in submitting application for license or for a renewal  
133 of a license or in any hearing concerning the revocation  
134 thereof, or who commits any of the acts herein declared  
135 to be unlawful, shall be guilty of a misdemeanor, and  
136 shall be punished for each offense by a fine of not less  
137 than twenty-five nor more than five hundred dollars, or  
138 imprisoned in the county jail for not less than thirty  
139 days or more than six months, or by both fine and im-  
140 prisonment in the discretion of the court. Justices of  
141 the peace shall have concurrent jurisdiction with the  
142 circuit court, and any other courts having criminal juris-  
143 diction in their county, for the trial of all misdemeanors  
144 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,  
3 and shall include synthetic ethyl alcohol but not denatur-  
4 ed alcohol.

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

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

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

17 "Spirits" shall mean any alcoholic beverage obtained  
18 by distillation and mixed with potable water and other

19 substances in solution, and includes brandy, rum, whiskey,  
20 cordials and gin.

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

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

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

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

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

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

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

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

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

45 "Distillery" shall mean an establishment where alco-  
46 holic liquor other than wine or beer is manufactured or  
47 in any way prepared.

48 "Public place" shall mean any place, building or con-  
49 veyance to which the public has, or is permitted to have  
50 access, including restaurants, soda fountains, and hotel  
51 dining rooms and lobbies, and corridors of hotels, and  
52 any highway, street, lane, park or place of public resort  
53 or amusement.

54 "State liquor store" shall mean a store established and  
55 operated by the commission under this chapter for the  
56 sale of alcoholic liquor in the original package for con-  
57 sumption off the premises.



58 "An agency" shall mean a drugstore, grocery store or  
59 general store designated by the commission as a retail  
60 distributor of alcoholic liquor for the West Virginia  
61 liquor control commission.

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

65 "Commission" shall mean the West Virginia liquor  
66 control commission.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Chastain*  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*Scott C. Miller*  
Clerk of the Senate

*W. B. Blackwell*  
Clerk of the House of Delegates

*H. B. Baskin*  
President of the Senate

*W. H. Lee*  
Speaker House of Delegates

The within *is disapproved* this the *29*  
day of *February*, 1980.

*John D. Ralston*  
Governor



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