

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

ENROLLED

Committee Substitute for
SENATE BILL NO. 437

(By Senators *Chapin and Shagrer*)

PASSED March 8, 1990

In Effect 90 days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 437

(BY SENATORS CHAFIN AND WAGNER, *original sponsors*)

[Passed March 8, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections eight, twenty-two, twenty-three and twenty-four, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulating and controlling the manufacture, sale, distribution, transportation, storage, and consumption of nonintoxicating beer generally; establishing the qualifications of an applicant for a retailer's license to sell nonintoxicating beer; describing the powers of the nonintoxicating beer commissioner; eliminating the requirement that the collection of taxes be by the use of tax paid crowns, lids and/or stamps; providing for the suspension or revocation of a license or other sanctions against a licensee upon certain violations; providing for notice and hearing on the imposition of sanctions; authorizing the assessment of costs; and providing for the imposition of sanctions against a Class B licensee.

Be it enacted by the Legislature of West Virginia:

That sections eight, twenty-two, twenty-three and twenty-four, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to
2 any person who submits an application therefor,
3 accompanied by a license fee, and, where required, a
4 bond, stating under oath:

5 (1) The name and residence of the applicant, the
6 duration of such residency, that the applicant has been
7 a resident of the state for a period of two years next
8 preceding the date of the application and that the
9 applicant is twenty-one years of age. If the applicant is
10 a firm, association, partnership, limited partnership or
11 corporation, the application shall include the residence
12 of the members or officers for a period of two years
13 next preceding the date of such application: *Provided*,
14 That if any person, firm, partnership, limited partner-
15 ship, association or corporation applies for a license as
16 a distributor, such person, or in the case of a firm,
17 partnership, limited partnership or association, the
18 members or officers thereof shall state under oath that
19 each has been a bona fide resident of the state for four
20 years preceding the date of such application;

21 (2) The place of birth of applicant, that he or she is
22 a citizen of the United States and of good moral
23 character and, if a naturalized citizen, when and
24 where naturalized; and, if a corporation organized or
25 authorized to do business under the laws of the state,
26 when and where incorporated, with the name and
27 address of each officer; that each officer is a citizen of
28 the United States and a person of good moral charac-
29 ter; and if a firm, association, partnership or limited
30 partnership, the place of birth of each member of the
31 firm, association, partnership or limited partnership,
32 and that each member is a citizen of the United States
33 and if a naturalized citizen, when and where natural-
34 ized, each of whom must qualify and sign the applica-
35 tion: *Provided*, That the requirements as to residence
36 shall not apply to the officers of a corporation which
37 shall apply for a retailer's license, but the officers,

38 agent, or employee who shall manage and be in charge
39 of the licensed premises shall possess all of the
40 qualifications required of an individual applicant for a
41 retailer's license, including the requirement as to
42 residence;

43 (3) The particular place for which the license is
44 desired and a detailed description thereof;

45 (4) The name of the owner of the building and, if the
46 owner is not the applicant, that such applicant is the
47 actual and bona fide lessee of the premises;

48 (5) That the place or building in which is proposed
49 to do business conforms to all laws of health, fire and
50 zoning regulations applicable thereto, and is a safe and
51 proper place or building, and is not within three
52 hundred feet of any school or church, measured from
53 front door to front door, along the street or streets:
54 *Provided*, That this requirement shall not apply to a
55 Class B license, or to any place now occupied by a beer
56 licensee, so long as it is continuously so occupied:
57 *Provided, however*, That the prohibition against
58 locating any such proposed business in a place or
59 building within three hundred feet of any school shall
60 not apply to any college or university that has notified
61 the commissioner, in writing, that it has no objection
62 to the location of any such proposed business in a place
63 or building within three hundred feet of such college
64 or university;

65 (6) That the applicant is not incarcerated and has not
66 during the five years immediately preceding the date
67 of said application been convicted of a felony;

68 (7) That the applicant is the only person in any
69 manner pecuniarily interested in the business so asked
70 to be licensed, and that no other person shall be in any
71 manner pecuniarily interested therein during the
72 continuance of the license; and

73 (8) That the applicant has not during five years next
74 immediately preceding the date of said application had
75 a nonintoxicating beer license revoked;

76 (b) The provisions and requirements of subsection

77 (a) of this section are mandatory prerequisites for the
78 issuance, and in the event any applicant fails to qualify
79 under the same, license shall be refused. In addition to
80 the information furnished in any application, the
81 commissioner may make such addition and indepen-
82 dent investigation of each applicant, and of the place
83 to be occupied, as deemed necessary or advisable; and
84 for this reason each and all applications, with license
85 fee and bond, must be filed thirty days prior to the
86 beginning of any fiscal year, and if application is for an
87 unexpired portion of any fiscal year, issuance of
88 license may be withheld for such reasonable time as
89 necessary for investigation.

90 (c) The commissioner may refuse a license to any
91 applicant under the provisions of this article if the
92 commissioner shall be of the opinion:

93 (1) That the applicant is not a suitable person to be
94 licensed;

95 (2) That the place to be occupied by the applicant is
96 not a suitable place; or is within three hundred feet of
97 any school or church, measured from front door to
98 front door along the street or streets: *Provided*, That
99 this requirement shall not apply to Class B licensee, or
100 to any place now occupied by a beer licensee, so long
101 as it is continuously so occupied: *Provided, however*,
102 That the prohibition against locating any such place to
103 be occupied by an applicant within three hundred feet
104 of any school shall not apply to any college or univer-
105 sity that has notified the commissioner, in writing,
106 that it has no objection to the location of any such
107 place within three hundred feet of such college or
108 university; or

109 (3) That the license should not be issued for reason
110 of conduct declared to be unlawful by this article.

§11-16-22. Powers of the commissioner; rules, or orders.

1 (a) In addition to all other powers conferred upon
2 the commissioner: and in order to effectively carry out
3 the provisions, intent and purposes of this article, the
4 commissioner shall have the power and authority to

5 adopt, promulgate, repeal, rescind and amend, in
6 accordance with the provisions of chapter twenty-
7 nine-a of this code, rules, standards, requirements and
8 orders, including, but not limited to, the following:

9 (1) Prescribing records and accounts, pertaining to
10 the manufacture, distribution and sales of nonintoxi-
11 cating beer, to be kept by the licensee and the form
12 thereof;

13 (2) Requiring the reporting of such information by
14 licensees as may be necessary for the effective admin-
15 istration of this article;

16 (3) Regulating the branding and labeling of packages,
17 bottles or other containers in which nonintoxicating
18 beer may be sold; and, in his discretion, requiring the
19 collection of all taxes provided for under section
20 thirteen of this article;

21 (4) Prohibiting shipment into the state and sale
22 within the state of low grade or under-standard
23 nonintoxicating beer;

24 (5) Referring to licenses and the issuance and
25 revocation of the same;

26 (6) Establishing the suitability of businesses and
27 locations for licensure, and requiring licensees to keep
28 their places of business where nonintoxicating beer is
29 sold at retail, and the equipment used in connection
30 therewith, clean and in a sanitary condition;

31 (7) The establishment of advertising guidelines,
32 prohibitions and prior permissions generally, includ-
33 ing, but not limited to, (i) the use of posters, placards,
34 mirrors, windows, doors or indoor and outdoor signs
35 generally, and print and electronic advertising of retail
36 licensees specifically, (ii) the sponsoring of athletic
37 events or contests by licensees and restrictions relating
38 thereto, (iii) the use of equipment, fixtures or supplies
39 in advertising, (iv) false advertising with respect to
40 any product of or sold by any licensee, including, but
41 not limited to, draft beer and coolers and (v) the
42 extent, if any, to which free goods and other induce-
43 ments may be utilized by any licensee;

44 (8) Wholesale prices or price changes, including, but
45 not limited to, the regulation and extent, if any, of any
46 temporary price markoff or markdown, temporary
47 wholesale price change downward or price discount,
48 sometimes referred to as "post downs" or as "posting
49 down" or any other price change, the express purpose
50 of which is to put into effect a temporary price
51 reduction, as well as the duration of time during
52 which such temporary price reduction is to remain in
53 effect;

54 (9) Restrictions upon West Virginia distributors or
55 other licensees with respect to the purchase of any
56 nonintoxicating beer or malt coolers from manufactur-
57 ers or brewers whether within or without the state
58 who have failed to qualify for manufacture or ship-
59 ment of any such product in the state; and

60 (10) Regulating, restricting or prohibiting a distribu-
61 tor from selling, offering for sale, distributing or
62 delivering nonintoxicating beer to any retailer whose
63 principal place of business, residence or licensed
64 premises is located without or beyond the assigned
65 territory of such distributor of such nonintoxicating
66 beer.

67 (b) Any rule or order heretofore adopted by the
68 commissioner and currently in effect upon the con-
69 vening of the regular session of the Legislature held in
70 the year one thousand nine hundred eighty-six shall
71 remain in effect until changed by the commissioner in
72 the manner prescribed by article three, chapter
73 twenty-nine-a of this code, irrespective of whether
74 specific authority for such currently effective rule
75 existed prior to such date.

**§11-16-23. Revocation or suspension of license; monetary
penalty; hearing assessment of costs; estab-
lishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that
2 a licensee has (i) violated the provisions of section
3 eighteen of this article, (ii) acted in such a way as
4 would have precluded initial or renewal licensure or
5 (iii) violated any rule or order promulgated by the

6 commissioner, the commissioner may:

7 (1) Revoke the licensee's license;

8 (2) Suspend the licensee's license;

9 (3) Place the licensee on probationary status for a
10 period not to exceed twelve months; and

11 (4) Impose a monetary penalty not to exceed one
12 thousand dollars for each violation where revocation is
13 not imposed.

14 (b) Any monetary penalty assessed and collected by
15 the commissioner shall be transmitted to the state
16 treasurer for deposit into the state treasury to the
17 credit of a special revenue fund designated "The
18 Nonintoxicating Beer Enforcement Fund", which is
19 hereby created. All moneys collected, received and
20 deposited in the "Nonintoxicating Beer Enforcement
21 Fund" shall be kept and maintained for expenditures
22 by the commissioner for the purpose of enforcement
23 of the statutes and rules pertaining to nonintoxicating
24 beer, and shall not be treated by the state treasurer or
25 state auditor as any part of the general revenue of the
26 state. At the end of each fiscal year all funds in the
27 nonintoxicating beer enforcement fund in excess of
28 two thousand dollars shall be transferred to the
29 general revenue fund.

30 (c) In addition to the grounds for revocation, suspen-
31 sion or other sanction of a license set forth in subsec-
32 tion (a) of this section, conviction of the licensee of any
33 offense constituting a violation of the laws of this state
34 or of the United States relating to nonintoxicating beer
35 or alcoholic liquor shall be mandatory grounds for
36 such sanctioning of a license.

**§11-16-24. Hearing on sanctioning of license; notice; review
of action of commissioner; clerk of court to
furnish commissioner copy of order or judg-
ment of conviction of licensee; assessment of
costs.**

1 The commissioner shall not revoke nor suspend any
2 license issued pursuant to this article or impose any

3 civil penalties authorized thereby unless and until a
4 hearing shall be held after at least ten days' notice to
5 the licensee of the time and place of such hearing,
6 which notice shall contain a statement or specification
7 of the charges, grounds or reasons for such proposed
8 contemplated action, and which shall be served upon
9 the licensee as notices under the West Virginia rules
10 of civil procedure or by certified mail, return receipt
11 requested, to the address for which license was issued;
12 at which time and place, so designated in the notice,
13 the licensee shall have the right to appear and produce
14 evidence in his behalf, and to be represented by
15 counsel.

16 The commissioner shall have authority to summon
17 witnesses in the hearings before him, and fees of
18 witnesses summoned on behalf of the state in proceed-
19 ings to sanction licenses shall be treated as a part of
20 the expenses of administration and enforcement. Such
21 fees shall be the same as those in similar hearings in
22 the circuit courts of this state. The commissioner may,
23 upon a finding of violation, assess a licensee a sum, not
24 to exceed one hundred fifty dollars per violation to
25 reimburse the commissioner for expenditures for
26 witness fees, court reporter fees and travel costs
27 incurred in holding the hearing. Any moneys so
28 assessed shall be transferred to the nonintoxicating
29 beer fund created by section twenty-three of this
30 article.

31 If, at the request of the licensee or on his motion,
32 the hearing shall be continued and shall not take place
33 on the day fixed by the commissioner in the notice
34 above provided for, then such licensee's license shall
35 be suspended until the hearing and decision of the
36 commissioner, and in the event of revocation or
37 suspension of such license, upon hearing before the
38 commissioner, the licensee shall not be permitted to
39 sell beer pending an appeal as provided by this article.
40 Any person continuing to sell beer after his license has
41 been suspended or revoked, as hereinbefore provided,
42 is guilty of a misdemeanor and shall be punished as
43 provided in section nineteen of this article.

44 The action of the commissioner in revoking or
45 suspending a license shall be subject to review by the
46 circuit court of Kanawha County, West Virginia, in the
47 manner provided in chapter twenty-nine-a of this
48 code, when such licensee may be aggrieved by such
49 revocation or suspension. Petition for such review
50 must be filed with said circuit court within a period of
51 thirty days from and after the date of revocation or
52 suspension by the commissioner; and any licensee
53 obtaining an order for such review shall be required
54 to pay the costs and fees incident to transcribing,
55 certifying and transmitting the records pertaining to
56 such matter to the circuit court. An application to the
57 supreme court of appeals of West Virginia for a writ
58 of error from any final order of the circuit court in
59 any such matter shall be made within thirty days from
60 and after the entry of such final order.

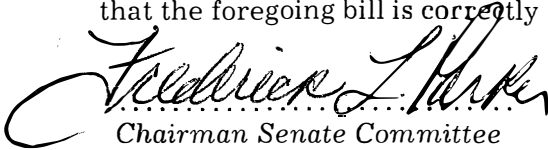
61 All such hearings, upon notice to show cause why
62 license should be revoked or suspended, before the
63 commissioner, shall be held in the offices of the
64 commissioner in Charleston, Kanawha County, West
65 Virginia, unless otherwise provided in such notice, or
66 agreed upon between the licensee and the commis-
67 sioner; and when such hearing is held elsewhere than
68 in the commissioner's office, the licensee may be
69 required to make deposits of the estimated costs of
70 such hearing.

71 Whenever any licensee has been convicted of any
72 offense constituting a violation of the laws of this state
73 or of the United States relating to nonintoxicating
74 beer, or alcoholic liquor, and such conviction has
75 become final, the clerk of the court in which such
76 licensee has been convicted shall forward to the
77 commissioner a certified copy of the order or judg-
78 ment of conviction if such clerk has knowledge that
79 the person so convicted is a licensee, together with the
80 certification of such clerk that the conviction is final.

81 In the case of a Class B licensee with multiple
82 licensed locations, the commissioner may, in his or her
83 discretion, revoke suspend or otherwise sanction, per
84 the provisions of section twenty-three of this article,

85 only the license for the location or locations involved
86 in the unlawful conduct for which licensure is sancti-
87 oned as opposed to all separately licensed locations of
88 such licensee.

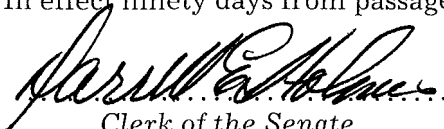
The Joint Committee on Enrolled Bills hereby certifies
that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

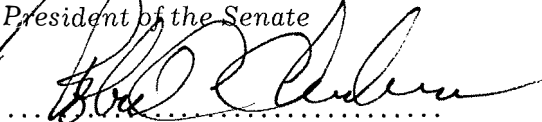
Originated in the Senate.

In effect ninety days from passage.

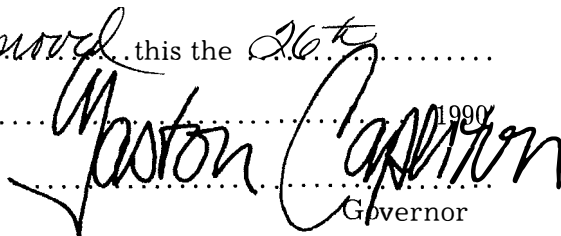

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 26th day of March 1990


Governor

PRESENTED TO THE

GOVERNOR

Date

3/16/90

Time

3:56 pm

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OFFICE OF ASST. VADM
SECURITY DIVISION