WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 437
(By Senators Chafin and Shaffer)

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.

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

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years next preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership or corporation, the application shall include the residence of the members or officers for a period of two years next preceding the date of such application: Provided, That if any person, firm, partnership, limited partnership or association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership or association, the members or officers thereof shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application;

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized or authorized to do business under the laws of the state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, the place of birth of each member of the firm, association, partnership or limited partnership, and that each member is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application: Provided, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a retailer's license, but the officers,
agent, or employee who shall manage and be in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer's license, including the requirement as to residence;

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

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

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

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

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

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

(b) The provisions and requirements of subsection
(a) of this section are mandatory prerequisites for the issuance, and in the event any applicant fails to qualify under the same, license shall be refused. In addition to the information furnished in any application, the commissioner may make such addition and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year, and if application is for an unexpired portion of any fiscal year, issuance of license may be withheld for such reasonable time as necessary for investigation.

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

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

(2) That the place to be occupied by the applicant is not a suitable place; or is within three hundred feet of any school or church, measured from front door to front door along the street or streets: Provided, That this requirement shall not apply to Class B licensee, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such place to be occupied by an applicant within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within three hundred feet of such college or university; or

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

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

(a) In addition to all other powers conferred upon the commissioner and in order to effectively carry out the provisions, intent and purposes of this article, the commissioner shall have the power and authority to
adopt, promulgate, repeal, rescind and amend, in accordance with the provisions of chapter twenty-nine-a of this code, rules, standards, requirements and orders, including, but not limited to, the following:

(1) Prescribing records and accounts, pertaining to the manufacture, distribution and sales of nonintoxicating beer, to be kept by the licensee and the form thereof;

(2) Requiring the reporting of such information by licensees as may be necessary for the effective administration of this article;

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

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

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

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

(7) The establishment of advertising guidelines, prohibitions and prior permissions generally, including, but not limited to, (i) the use of posters, placards, mirrors, windows, doors or indoor and outdoor signs generally, and print and electronic advertising of retail licensees specifically, (ii) the sponsoring of athletic events or contests by licensees and restrictions relating thereto, (iii) the use of equipment, fixtures or supplies in advertising, (iv) false advertising with respect to any product of or sold by any licensee, including, but not limited to, draft beer and coolers and (v) the extent, if any, to which free goods and other inducements may be utilized by any licensee;
(8) Wholesale prices or price changes, including, but not limited to, the regulation and extent, if any, of any temporary price markoff or markdown, temporary wholesale price change downward or price discount, sometimes referred to as “post downs” or as “posting down” or any other price change, the express purpose of which is to put into effect a temporary price reduction, as well as the duration of time during which such temporary price reduction is to remain in effect;

(9) Restrictions upon West Virginia distributors or other licensees with respect to the purchase of any nonintoxicating beer or malt coolers from manufacturers or brewers whether within or without the state who have failed to qualify for manufacture or shipment of any such product in the state; and

(10) Regulating, restricting or prohibiting a distributor from selling, offering for sale, distributing or delivering nonintoxicating beer to any retailer whose principal place of business, residence or licensed premises is located without or beyond the assigned territory of such distributor of such nonintoxicating beer.

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

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

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

(1) Revoke the licensee’s license;

(2) Suspend the licensee’s license;

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

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

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated “The Nonintoxicating Beer Enforcement Fund”, which is hereby created. All moneys collected, received and deposited in the “Nonintoxicating Beer Enforcement Fund” shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to nonintoxicating beer, and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of two thousand dollars shall be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for 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 judgment of conviction of licensee; assessment of costs.

The commissioner shall not revoke nor suspend any license issued pursuant to this article or impose any
civil penalties authorized thereby unless and until a
hearing shall be held after at least ten days’ notice to
the licensee of the time and place of such hearing,
which notice shall contain a statement or specification
of the charges, grounds or reasons for such proposed
contemplated action, and which shall be served upon
the licensee as notices under the West Virginia rules
of civil procedure or by certified mail, return receipt
requested, to the address for which license was issued;
at which time and place, so designated in the notice,
the licensee shall have the right to appear and produce
evidence in his behalf, and to be represented by
counsel.

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

If, at the request of the licensee or on his motion,
the hearing shall be continued and shall not take place
on the day fixed by the commissioner in the notice
above provided for, then such licensee’s license shall
be suspended until the hearing and decision of the
commissioner, and in the event of revocation or
suspension of such license, upon hearing before the
commissioner, the licensee shall not be permitted to
sell beer pending an appeal as provided by this article.
Any person continuing to sell beer after his license has
been suspended or revoked, as hereinbefore provided,
is guilty of a misdemeanor and shall be punished as
provided in section nineteen of this article.
The action of the commissioner in revoking or suspending a license shall be subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code, when such licensee may be aggrieved by such revocation or suspension. Petition for such review must be filed with said circuit court within a period of thirty days from and after the date of revocation or suspension by the commissioner; and any licensee obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter shall be made within thirty days from and after the entry of such final order.

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner, shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner; and when such hearing is held elsewhere than in the commissioner’s office, the licensee may be required to make deposits of the estimated costs of such hearing.

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

In the case of a Class B licensee with multiple licensed locations, the commissioner may, in his or her discretion, revoke suspend or otherwise sanction, per the provisions of section twenty-three of this article,
only the license for the location or locations involved in the unlawful conduct for which licensure is sanctioned as opposed to all separately licensed locations of 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, 1900.

Governor