WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

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ENROLLED

Com. Sub. for
SENATE BILL NO. 14

(By Senator Wooton)

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PASSED April 10, 1993

In Effect 90 days from Passage.
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 14

(SENATOR WOOTON, original sponsor)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three of chapter sixty of said code; to amend and reenact section twenty-four, article three-a of said chapter; to amend and reenact sections twelve, twelve-a and thirteen of said chapter; and to amend and reenact section twenty-a, article eight of said chapter, all relating to prohibiting persons under the age of twenty-one from purchasing, consuming, possessing, selling and serving nonintoxicating beer, wine and alcoholic liquor; allowing employment by licensees of underage persons in certain instances; allowing exceptions for underage law enforcement and commission agents; providing criminal penalties; raising the amount to be retained in enforcement funds at fiscal year end; prohibiting the sale or giving of nonintoxicating beer, wine or alcoholic liquors to certain persons.

Be it enacted by the Legislature of West Virginia:
That sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-two, article three of chapter sixty of said code be amended and reenacted; that section twenty-four, article three-a of said chapter be amended and reenacted; that sections twelve, twelve-a and thirteen of said chapter be amended and reenacted; and that section twenty-a, article eight of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.

1 (a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver nonintoxicating
28 beer.

29 Nothing in this subsection shall prohibit a person
30 who is at least eighteen years of age from purchasing
31 or possessing nonintoxicating beer when he or she is
32 acting upon the request of or under the direction and
33 control of any member of a state, federal or local law-
34 enforcement agency or the West Virginia alcohol
35 beverage administration while the agency is conduct­
36 ing an investigation or other activity relating to the
37 enforcement of the alcohol beverage control statutes
38 and the rules and regulations of the commissioner.

39 (b) Any person under the age of twenty-one years
40 who, for the purpose of purchasing nonintoxicating
41 beer, misrepresents his or her age, or who for such
42 purpose presents or offers any written evidence of age
43 which is false, fraudulent or not actually his or her
44 own, or who illegally attempts to purchase nonintox­
45 icating beer, is guilty of a misdemeanor, and, upon
46 conviction thereof, shall be fined in an amount not to
47 exceed fifty dollars or shall be imprisoned in the
48 county jail for a period not to exceed seventy-two
49 hours, or both such fine and imprisonment, or, in lieu
50 of such fine and imprisonment, may, for the first
51 offense, be placed on probation for a period not
52 exceeding one year.

53 (c) Any person who shall knowingly buy for, give to
54 or furnish nonintoxicating beer to anyone under the
55 age of twenty-one to whom they are not related by
56 blood or marriage is guilty of a misdemeanor and
57 shall, upon conviction thereof, be fined in an amount
58 not to exceed one hundred dollars or shall be impris­
59 oned in the county jail for a period not to exceed ten
60 days, or both such fine and imprisonment.

61 (d) Any person who at any one time transports into
62 the state for their personal use, and not for resale,
63 more than six and seventy-five hundredths gallons of
64 nonintoxicating beer, upon which the West Virginia
65 barrel tax has not been imposed, shall be guilty of a
66 misdemeanor and shall, upon conviction thereof, be
67 fined in an amount not to exceed one hundred dollars
and have all the untaxed nonintoxicating beer in their possession at the time of the arrest confiscated, or imprisoned for ten days in the county jail, or both fined and imprisoned.

If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to national uniform drinking age of twenty-one as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Legislature that the provisions contained in this section and section eighteen of this article which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than twenty-one years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than nineteen years of age.

§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 or of chapter sixty of this code; (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 "Non-
toxicating Beer Enforcement Fund", which is here-
by created. All moneys collected, received and depos-
ited 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 nonin-
toxicating beer enforcement fund in excess of twenty
thousand dollars shall be transferred to the general
revenue fund.

(c) In addition to the grounds for revocation, suspen-
sion or other sanction of a license set forth in subsec-
tion (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. Conviction of the licen-
see of any violation of the laws of this state or of the
United States relating to prostitution or the sale,
possession or distribution of narcotics or controlled
substances shall be mandatory grounds for revocation
of the licensee's license for a period of at least one
year.

CHAPTER 60. STATE CONTROL
OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.
§60-3-22. Sales to certain persons prohibited.

(a) Alcoholic liquors and nonintoxicating beer as
defined in section three, article sixteen, chapter eleven
of this code shall not be sold to a person who is:

(1) Less than twenty-one years of age;
(2) An habitual drunkard;
(3) Intoxicated;
(4) Addicted to the use of any controlled substance as defined by any of the provisions of chapter sixty-a of this code; or

(5) Mentally incompetent.

(b) It shall be a defense to a violation of subdivision (1), subsection (a) of this section if the seller shows that the purchaser:

(1) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or

(2) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a) Any person under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-
enforcement agency or the West Virginia alcohol
beverage administration while the agency is conduct-
ing an investigation or other activity relating to the
enforcement of the alcohol beverage control statutes
and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years
who, for the purpose of purchasing liquor from a retail
licensee, misrepresents his or her age, or who for such
purpose presents or offers any written evidence of age
which is false, fraudulent or not actually his or her
own, or who illegally attempts to purchase liquor from
a retail licensee, is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined in an amount not to
exceed fifty dollars or imprisoned in the county jail for
a period not to exceed seventy-two hours, or both
fined and imprisoned, or, in lieu of such fine and
imprisonment, may, for the first offense, be placed on
probation for a period not exceeding one year.

(c) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one to
whom he or she is not related by blood or marriage
any liquor from whatever source, is guilty of a
misdemeanor and shall, upon conviction thereof, be
fined in an amount not to exceed one hundred dollars
or imprisoned in the county jail for a period not to
exceed ten days, or both fined and imprisoned.

(d) No person while on the premises of a retail outlet
may consume liquor or break the seal on any package
or bottle of liquor. Any person who violates the
provisions of this subsection is guilty of a misdemean-
or and shall, upon conviction thereof, be fined in an
amount not to exceed one hundred dollars or impris-
oned in the county jail for a period not to exceed ten
days, or both fined and imprisoned.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal
penalties.

(a) It is unlawful for any licensee, or agent, employ-

ee or member thereof, on such licensee's premises to:
(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) (A) Employ any person who is less than eighteen
years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(10) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

§60-7-12a. Unlawful acts by persons.

(a) A person under the age of twenty-one years may not order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Any person under the age of twenty-one years who violates any provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or imprisoned in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, and, in addition to such fine and imprisonment, may, for the first offense, be placed on probation for a period not to exceed one year. Provided, That nothing in this subsection shall prohibit a person who
is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, wine or alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase nonintoxicating beer, wine or alcoholic liquors from a licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one, any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee, is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars, or imprisoned in the county jail not more than ten days, or both fined and imprisoned.

§60-7-13. 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 article sixteen, chapter eleven or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgat-
ed by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

(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 Alcohol Beverage Control Enforcement Fund”, which is hereby created. All moneys collected, received and deposited in the “Alcohol Beverage Control Enforcement Fund” shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, 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 alcohol beverage control enforcement fund in excess of twenty 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 alcoholic liquor, nonintoxicating beer or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession or distribution of narcotics or controlled substances shall be mandatory grounds for revocation of the licensee’s license for a period of at least one year.
§60-8-20a. Unlawful acts by persons.

(a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves wine or other alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

(b) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves wine or other alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.
who, for the purpose of purchasing wine or other alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase wine or other alcoholic liquors, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one to whom they are not related by blood or marriage, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.
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..............this the...........
day of............., 1993.

Governor