WEST VIRGINIA LEGISLATURE
Regular Session 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. 520

(By Senator Anderson)

PASSED March 9, 2002

In Effect ninety days from Passage
AN ACT to amend and reenact section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article eight, chapter sixty of said code, all relating to wine and nonintoxicating beer generally; and allowing retailers of wine and nonintoxicating beer to pay distributors by electronic funds transfer.

Be it enacted by the Legislature of West Virginia:

That section eighteen, 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 twenty-two, article eight, chapter sixty of said code be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

ARTICLE 16. NONINToxicATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, 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, nonintoxicating beer or cooler 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;

(2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, 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 the containers when title is retained by the vendor: Provided, That a distributor may
accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor or brewpub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) 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 a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events: Provided, however, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

(7) For any licensee to permit in his or her premises any lewd, immoral or improper entertainment, conduct or practice;

(8) 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 or a holder of a license or a private wine restaurant issued under the provisions of article eight of said chapter to possess a federal license, tax receipt or other permit entitling,
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67 authorizing or allowing such licensee to sell liquor or
68 alcoholic drinks other than nonintoxicating beer;

69 (9) For any licensee to obstruct the view of the interior of
70 his or her premises by enclosure, lattice, drapes or any
71 means which would prevent plain view of the patrons
72 occupying the premises. The interior of all licensed
73 premises shall be adequately lighted at all times: Provided,
74 That provisions of this subdivision do not apply to the
75 premises of a Class B retailer, the premises of a private
76 club licensed under the provisions of article seven, chapter
77 sixty of this code or the premises of a private wine restaur-
78 ant licensed under the provisions of article eight of said
79 chapter;

80 (10) For any licensee to manufacture, import, sell, trade,
81 barter, possess or acquiesce in the sale, possession or
82 consumption of any alcoholic liquors on the premises
83 covered by such license or on premises directly or indi-
84 rectly used in connection therewith: Provided, That the
85 prohibition contained in this subdivision with respect to
86 the selling or possessing or to the acquiescence in the sale,
87 possession or consumption of alcoholic liquors is not
88 applicable with respect to the holder of a license to operate
89 a private club issued under the provisions of article seven,
90 chapter sixty of this code nor shall the prohibition be
91 applicable to a private wine restaurant licensed under the
92 provisions of article eight of said chapter insofar as such
93 private wine restaurant is authorized serve wine;

94 (11) For any retail licensee to sell or dispense nonintoxi-
95 cating beer, as defined in this article, purchased or ac-
96 quired from any source other than a distributor, brewer or
97 manufacturer licensed under the laws of this state;

98 (12) For any licensee to permit loud, boisterous or
99 disorderly conduct of any kind upon his or her 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 the business is located: Provided, That
no licensee may have in connection with his or her place of
business any loudspeaker located on the outside of the
licensed premises that broadcasts or carries music of any
kind;

(13) For any person whose license has been revoked, as
provided in this article, to obtain employment with any
retailer within the period of one year from the date of the
revocation, or for any retailer to knowingly employ that
person within the specified time;

(14) For any distributor to sell, possess for sale, transport
or distribute nonintoxicating beer except in the original
container;

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

(16) For any Class B retailer to permit the consumption
of nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their ser-
vants, agents or employees, or for any licensee by or
through any servants, agents or employees, to allow, suffer
or permit any person less than eighteen years of age to
loiter in or upon any licensed premises; except, however,
that the provisions of this subdivision do not apply where
a person under the age of eighteen years is in or upon the
premises in the immediate company of his or her parent or
parents, or where and while a person under the age of
eighteen years is in or upon the 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 prepared and served or sold for
consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute
or deliver any nonintoxicating beer outside the territory
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assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: Provided, That nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule or regulation lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, regulation or order lawfully promulgated by the commissioner, 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 nor more than six months, or by both fine and imprisonment in the discretion of the court. Magistrates 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.

(c) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of
the commissioner, 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, may employ persons
who are less than eighteen years of age but at least sixteen
years of age: Provided, That the person's duties shall not
include the sale or delivery of nonintoxicating beer or
alcoholic liquors: Provided, however, That the authoriza-
tion to employ persons under the age of eighteen years
shall be clearly indicated on the licensee's license.

CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.

ARTICLE 8. SALE OF WINES.

§60-8-22. Sales on credit prohibited; exception.

It shall be unlawful for a distributor to sell or offer to
sell, or a retailer to purchase or receive, any wine except
on a cash basis and no right of action exists to collect any
claims for credit extended contrary to the provisions of
this subdivision: Provided, That nothing herein prohibits,
as a credit on any subsequent sale, the crediting of the
purchase price charged for wine returned by the purchaser
because of damage, spoilage, erroneous shipments or
orders and other such reasons customary in the trade:
Provided, however, That a distributor may accept an
electronic transfer of funds if the transfer of funds is
initiated by an irrevocable payment order on the invoiced
amount for the wine. The cost of the electronic fund
transfer must be born by the retailer and the distributor
must initiate the transfer no later than noon of one
business day after the delivery.
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 2nd Day of April, 2002.

Governor