WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 535

(By Senator Kessler, et al)

PASSED March 8, 2003

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 535

(By Senators Kessler, Hunter, Rowe, Fanning, Minard, Edgell, White, Weeks and Prezioso, original sponsors)

[Passed March 8, 2003; 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; to amend article three-a, chapter sixty of said code by adding thereto a new section, designated section twenty-five-a; and to amend and reenact section twenty, article eight of said chapter, all relating to the sale of alcohol, wine and beer to minors; mandatory carding of purchasers of alcohol, wine and beer; and defining terms.

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; that article three-a, chapter sixty of said code be amended by adding thereto a new section, designated section twenty-five-a; and that section twenty, article eight of said chapter 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. (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. (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. (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. (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, authorizing or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(9) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: Provided,

That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection therewith: Provided, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;
(12) For any licensee to permit loud, boisterous or 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 servants, 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 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 is considered 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 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, 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 is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. 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) (1) A Class B licensee that:
(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) “Transaction scan” means the process by which a person checks, by means of a transaction scan device, the
age and identity of the cardholder, and "transaction scan
device" means any commercial device or combination of
devices used at a point of sale that is capable of decipher-
ing in an electronically readable format the information
enclosed on the magnetic strip or bar code of a driver's
license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of
the commissioner shall prevent or be considered to pro-
hibit 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 may 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 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-25a. Mandatory verification of age of persons purchas-
ing alcohol.

(a) A licensee who:

(1) Has installed a transaction scan device in its licensed
premises; and

(2) Can demonstrate that it requires each employee,
servant, or agent to verify the age of any individual to
whom liquor is sold, furnished, or given away by the use of
the transaction device may not be subject to: (A) Any
criminal penalties whatsoever; (B) any administrative
penalties from the commissioner; or (C) any civil liability
whatsoever for the improper sale, furnishing or giving
away of liquor to an individual who is less than twenty-
one years of age by one of his or her employees, servants or
agents. Any agent, servant or employee who has improp-
erly sold, furnished or given away liquor to an individual
who is less than twenty-one years of age is subject to the
criminal penalties of subsection (b) of this section. Any
agent, servant or employee who has improperly sold,
furnished or given away liquor to an individual less than
twenty-one years of age is subject to termination from
employment, and the employer shall have no civil liability
for the termination.

(b) For purposes of this subsection, a licensee can
demonstrate that it requires each employee, servant or
agent to verify the age of any individual to whom liquor is
sold by providing evidence:

(1) That it has developed a written policy which requires
each employee, servant or agent to verify the age of each
individual to whom liquor will be sold, furnished or given
away;

(2) That it has communicated this policy to each em-
ployee, servant or agent; and

(3) That it monitors the actions of its employees, servants
or agents regarding the sale, furnishing or giving away of
liquor and that it has taken corrective action for any
discovered noncompliance with this policy.

(c) "Transaction scan" means the process by which a
person checks, by means of a transaction scan device, the
age and identity of the cardholder, and "transaction scan
device" means any commercial device or combination of
devices used at a point of sale that is capable of decipher-
ing in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

ARTICLE 8. SALE OF WINES.

§60-8-20. Unlawful acts generally.

1. It shall be unlawful:

2. (a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of section six of this article or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in section five-a, article one of this chapter;

3. (b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale or sell wine other than in the original package;

4. (c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age, or to a mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: Provided, That the provisions of section twenty-five-a, article three-a of this chapter shall apply to sales of wine;

5. (d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;

6. (e) For a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, “primary source of supply” means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a
wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: Provided, That no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor licensed in this state: Provided, however, That nothing herein is considered 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, of which brand or brands the other distributor may be temporarily out of stock. The commissioner shall promulgate rules necessary to carry out the provision of this subsection;

(f) For a person to violate any reasonable rule or regulation promulgated by the commissioner under this article;

(g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery of wine under the provisions of 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 may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butcher
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker House of Delegates

The within....... approved....... this the....... Day of....... 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3-20-03
Time 9:30 AM