

FILED

2005 MAY -2 P 3: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 268

(By Senator Kessler, et al)

PASSED April 9, 2005

In Effect 90 days from Passage

FILED

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 268

(SENATORS KESSLER, HELMICK, PLYMALE, PREZIOSO,
BOLEY, MCKENZIE, UNGER, FOSTER, BARNES
AND JENKINS, *original sponsors*)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §11-16-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-3A-24 of said code, all relating to underage possession of nonintoxicating beer and alcoholic liquor; and conforming state law to federal requirements by providing that violation by a person under the age of eighteen constitutes a status offense instead of a misdemeanor.

Be it enacted by the Legislature of West Virginia:

That §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-3A-24 of said code 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)(1) Any person eighteen or over but under the age of
2 twenty-one years who purchases, consumes, sells, pos-
3 sesses or serves nonintoxicating beer is guilty of a misde-
4 meanor and, upon conviction thereof, shall be fined an
5 amount not to exceed five hundred dollars or shall be
6 incarcerated in jail for a period not to exceed seventy-two
7 hours, or both fined and imprisoned or, in lieu of such fine
8 and incarceration, may, for the first offense, be placed on
9 probation for a period not to exceed one year. Any person
10 under the age of eighteen years who purchases, consumes,
11 sells, possesses or serves nonintoxicating beer is guilty of
12 a status offense as that term is defined in section four,
13 article one, chapter forty-nine of this code and, upon
14 adjudication therefor, shall be referred to the Department
15 of Health and Human Resources for services, as provided
16 in section eleven, article five of said chapter.

17 (2) Nothing in this article, nor any rule or regulation of
18 the Commissioner, shall prevent or be deemed to prohibit
19 any person who is at least eighteen years of age from
20 serving in the lawful employment of any licensee, which
21 may include the sale or delivery of nonintoxicating beer as
22 defined in this article. Further, nothing in this article, nor
23 any rule or regulation of the Commissioner, shall prevent
24 or be deemed to prohibit any person who is less than
25 eighteen but at least sixteen years of age from being
26 employed by a licensee whose principal business is the sale
27 of food or consumer goods or the providing of recreational
28 activities, including, but not limited to, nationally fran-
29 chised fast food outlets, family-oriented restaurants,
30 bowling alleys, drug stores, discount stores, grocery stores
31 and convenience stores: *Provided*, That such person shall
32 not sell or deliver nonintoxicating beer.

33 (3) Nothing in this subsection shall prohibit a person
34 who is at least eighteen years of age from purchasing or
35 possessing nonintoxicating beer when he or she is acting
36 upon the request of or under the direction and control of
37 any member of a state, federal or local law-enforcement

38 agency or the West Virginia Alcohol Beverage Administra-
39 tion while the agency is conducting an investigation or
40 other activity relating to the enforcement of the alcohol
41 beverage control statutes and the rules of the Commis-
42 sioner.

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

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

64 (d)(1) Any person who at any one time transports into the
65 state for their personal use, and not for resale, more than
66 six and seventy-five hundredths gallons of nonintoxi-
67 cating beer, upon which the West Virginia barrel tax has
68 not been imposed, shall be guilty of a misdemeanor and,
69 upon conviction thereof, shall be fined an amount not to
70 exceed one hundred dollars and have all the untaxed
71 nonintoxicating beer in their possession at the time of the
72 arrest confiscated, or imprisoned for ten days in jail, or
73 both fined and imprisoned.

74 (2) If the Congress of the United States repeals the
75 mandate established by the Surface Transportation
76 Assistance Act of 1982 relating to national uniform
77 drinking age of twenty-one as found in section six of
78 Public Law 98-363, or a court of competent jurisdiction
79 declares the provision to be unconstitutional or otherwise
80 invalid, it is the intent of the Legislature that the provi-
81 sions contained in this section and section eighteen of this
82 article which prohibit the sale, furnishing, giving, pur-
83 chase or ownership of nonintoxicating beer to or by a
84 person who is less than twenty-one years of age shall be
85 null and void and the provisions therein shall thereafter
86 remain in effect and apply to the sale, furnishing, giving,
87 purchase or ownership of nonintoxicating beer to or by a
88 person who is less than nineteen years of age.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-24. Unlawful acts by persons.

1 (a)(1) Any person who is eighteen or over but under the
2 age of twenty-one years who purchases, consumes, sells,
3 serves or possesses alcoholic liquor is guilty of a misde-
4 meanor and, upon conviction thereof, shall be fined an
5 amount not to exceed five hundred dollars or shall be
6 incarcerated in jail for a period not to exceed seventy-two
7 hours, or both fined and imprisoned or, in lieu of such fine
8 and incarceration, may, for the first offense, be placed on
9 probation for a period not to exceed one year. Any person
10 who is under eighteen years who purchases, consumes,
11 sells, serves or possesses alcoholic liquor is guilty of a
12 status offense, as that term is defined in section four,
13 article one, chapter forty-nine of this code and, upon
14 adjudication therefor, shall be referred to the Department
15 of Health and Human Resources for services, as provided
16 in section eleven, article five of said chapter.

17 (2) Nothing in this article, nor any rule or regulation of
18 the Commissioner, shall prevent or be deemed to prohibit
19 any person who is at least eighteen years of age from
20 serving in the lawful employment of a licensee which
21 includes the sale and serving of alcoholic liquor.

22 (3) Nothing in this subsection shall prohibit a person
23 who is at least eighteen years of age from purchasing or
24 possessing alcoholic liquor when he or she is acting upon
25 the request of or under the direction and control of any
26 member of a state, federal or local Law-enforcement
27 Agency or the West Virginia Alcohol Beverage Administra-
28 tion while the agency is conducting an investigation or
29 other activity relating to the enforcement of the alcohol
30 beverage control statutes and the rules and regulations of
31 the Commissioner.

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

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

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

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

Randy White
.....
Chairman Senate Committee

D. Rich Berry
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell E. Holmes
.....
Clerk of the Senate

Erny D. Ford
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *2*

Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:30am