ENROLLED

Committee Substitute for

SENATE BILL NO. 268

(By Senator Kessler, et al)

PASSED April 9, 2005

In Effect 90 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.
(a)(1) Any person eighteen or over but 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 an amount not to exceed five hundred dollars or shall be incarcerated in 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. Any person under the age of eighteen years who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a status offense as that term is defined in section four, article one, chapter forty-nine of this code and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in section eleven, article five of said chapter.

(2) 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 beer.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer 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 Administra-

tion while the agency is conducting an investigation or
other activity relating to the enforcement of the alcohol
beverage control statutes and the rules of the Commis-
sioner.

(b) Any person under the age of twenty-one years who,
for the purpose of purchasing nonintoxicating beer,
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 is
guilty of a misdemeanor and, upon conviction thereof,
shall be fined an amount not to exceed fifty dollars or shall
be imprisoned in 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 nonintoxicating beer to anyone under the age of
twenty-one to whom they are not related by blood or
marriage is guilty of a misdemeanor and, upon conviction
thereof, shall be fined an amount not to exceed one
hundred dollars or shall be imprisoned in jail for a period
not to exceed ten days, or both such fine and imprison-
ment.

(d)(1) Any person who at any one time transports into the
state for their personal use, and not for resale, more than
six and seventy-five hundredths gallons of nonintoxi-
cating beer, upon which the West Virginia barrel tax has
not been imposed, shall be guilty of a misdemeanor and,
upon conviction thereof, shall be fined 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 jail, or
both fined and imprisoned.
(2) 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.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a)(1) Any person who is eighteen or over but 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 an amount not to exceed five hundred dollars or shall be incarcerated in 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. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in section four, article one, chapter forty-nine of this code and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in section eleven, article five of said chapter.
(2) 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.

(3) 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 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 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 an amount not to exceed fifty dollars or imprisoned in 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, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or imprisoned in 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 misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or imprisoned in jail for a period not to exceed ten days, or both fined and imprisoned.
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 day of May, 2005.

Governor