

2013 APR 29 PM 5:10

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 498**

(SENATOR PALUMBO, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; TO TAKE EFFECT JULY 1, 2013.]

SB 498

2013 APR 29 PM 5:10

**E N R O L L E D**  
COMMITTEE SUBSTITUTE

SECRETARY OF STATE

FOR

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 498**

(SENATOR PALUMBO, *original sponsor*)

[Passed April 13, 2013; to take effect July 1, 2013.]

AN ACT to amend and reenact §11-16-24 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3A-28 of said code; to amend and reenact §60-7-13a of said code; and to amend and reenact §60-8-18 of said code, all relating to hearing and appeal procedures for certain licenses issued by the Alcohol Beverage Control Administration; requiring that appeals from commissioner's decision to refuse to issue or renew certain licenses be brought in the circuit court of Kanawha County or the circuit court in the county where the licensed premises is proposed to be located or conduct sales; requiring that appeals from the commissioner's decision regarding disciplinary action against a licensee are to be brought in the circuit court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located or does conduct sales; and providing that the licensee appealing the commissioner's decision is required to pay the costs and fees incident to transcribing, certifying and transmitting records pertaining to the appeal.

*Be it enacted by the Legislature of West Virginia:*

That §11-16-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3A-28 of said code be amended and reenacted; that §60-7-13a of said code be amended and reenacted; and that §60-8-18 of said code be amended and reenacted. all to read as follows:

## CHAPTER 11. TAXATION.

### ARTICLE 16. NONINTOXICATING BEER.

**§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.**

1       (a) The commissioner may not revoke or suspend a  
2 license issued pursuant to this article or impose a civil penalty  
3 authorized under this article unless and until a hearing is held  
4 after at least ten days' notice to the licensee of the time and  
5 place of the hearing, which notice shall contain a statement  
6 or specification of the charges, grounds or reasons for the  
7 proposed contemplated action, and which is served upon the  
8 licensee as notices under the West Virginia Rules of Civil  
9 Procedure or by certified mail, return receipt requested, to the  
10 address for which license was issued; at which time and  
11 place, so designated in the notice, the licensee has the right to  
12 appear and produce evidence in his or her behalf, and to be  
13 represented by counsel.

14       (b) The commissioner may summon witnesses in the  
15 hearings before him or her, and fees of witnesses summoned  
16 on behalf of the state in proceedings to sanction licenses shall  
17 be treated as a part of the expenses of administration and

18 enforcement. The fees shall be the same as those in similar  
19 hearings in the circuit courts of this state. The commissioner  
20 may, upon a finding of violation, assess a licensee a sum not  
21 to exceed \$150 per violation to reimburse the commissioner  
22 for expenditures for witness fees, court reporter fees and  
23 travel costs incurred in holding the hearing. Moneys so  
24 assessed shall be transferred to the Nonintoxicating Beer  
25 Fund created by section twenty-three of this article.

26 (c) If, at the request of the licensee or on his or her  
27 motion, the hearing is continued and does not take place on  
28 the day fixed by the commissioner in the notice of hearing,  
29 then the licensee's license may be suspended until the hearing  
30 and decision of the commissioner, and in the event of  
31 revocation or suspension of the license, upon hearing before  
32 the commissioner, the licensee is not permitted to sell beer  
33 pending an appeal as provided by this article. Any person  
34 continuing to sell beer after his or her license has been  
35 suspended or revoked, as hereinbefore provided, is guilty of  
36 a misdemeanor and, shall be punished as provided in section  
37 nineteen of this article.

38 (d) Notwithstanding the provisions of subsection (b),  
39 section four, article five, chapter twenty-nine-a of this code,  
40 the action of the commissioner in revoking, suspending,  
41 sanctioning or refusing a license is subject to review by the  
42 circuit court of Kanawha County or the circuit court in the  
43 county where the proposed or licensed premises is located  
44 and will or does conduct sales: *Provided*, That in all other  
45 respects, such review shall be conducted in the manner  
46 provided in chapter twenty-nine-a of this code. The petition  
47 for review must be filed with the circuit court within thirty  
48 days following entry of the final order of revocation,  
49 suspension, sanction or refusal issued by the commissioner.  
50 An applicant or licensee obtaining an order for review is  
51 required to pay the costs and fees incident to transcribing,  
52 certifying and transmitting the records pertaining to the

53 matter to the circuit court. An application to the Supreme  
54 Court of Appeals of West Virginia for a writ of error from  
55 any final order of the circuit court in the matter shall be made  
56 within thirty days from and after the entry of the final circuit  
57 court order.

58 (c) All hearings, upon notice to show cause why license  
59 should be revoked, suspended, sanctioned or refused, before  
60 the commissioner shall be held in the offices of the  
61 commissioner in Charleston, Kanawha County, unless  
62 otherwise provided by the commissioner in the notice of  
63 hearing. When the hearing is held elsewhere than in the  
64 commissioner's office, the licensee may be required to make  
65 deposits of the estimated costs of the hearing.

66 (f) Whenever a licensee has been convicted of an offense  
67 constituting a violation of the laws of this state or of the  
68 United States relating to nonintoxicating beer, or alcoholic  
69 liquor, and the conviction has become final, the clerk of the  
70 court in which the licensee has been convicted shall forward  
71 to the commissioner a certified copy of the order or judgment  
72 of conviction if the clerk has knowledge that the person so  
73 convicted is a licensee, together with the certification of the  
74 clerk that the conviction is final.

75 (g) In the case of a Class B licensee with multiple  
76 licensed locations, the commissioner may, in his or her  
77 discretion, revoke, suspend or otherwise sanction, per the  
78 provisions of section twenty-three of this article, only the  
79 license for the location or locations involved in the unlawful  
80 conduct for which licensure is sanctioned, as opposed to all  
81 separately licensed locations of the licensee.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

**§60-3A-28. Notice of and hearing on revocation; right of appeal; appeal procedures.**

1 (a) Before a retail license issued under the authority of  
2 this article is suspended for a period of more than twenty  
3 days, or revoked, the commissioner shall give at least ten  
4 days' notice to the retail licensee. Notice shall be in writing,  
5 shall state the reason for suspension or revocation, and shall  
6 designate a time and place for a hearing where the retail  
7 licensee may show cause why the retail license should not be  
8 suspended or revoked. Notice shall be sent by certified mail  
9 to the address for which the retail license was issued. The  
10 retail licensee may, at the time designated for the hearing,  
11 produce evidence in his or her behalf and be represented by  
12 counsel.

13 (b) The hearing and the administrative procedures prior  
14 to, during and following the hearing are governed by and  
15 shall be conducted in accordance with the provisions of  
16 article five, chapter twenty-nine-a of this code in like manner  
17 as if the provisions of article five were fully set forth in this  
18 section.

19 (c) Notwithstanding the provisions of subsection (b),  
20 section four, article five, chapter twenty-nine-a of this code,  
21 any person adversely affected by a final order entered  
22 following the hearing has the right of judicial review by the  
23 circuit court of Kanawha County or the circuit court in the  
24 county where the proposed or licensed premises is located  
25 and will or does conduct sales: *Provided*, That in all other  
26 respects, such review shall be conducted in the manner  
27 provided in chapter twenty-nine-a of this code. The petition  
28 for the review must be filed with the circuit court within  
29 thirty days following entry of the final order issued by the  
30 commissioner. An applicant or licensee obtaining the review  
31 is required to pay the costs and fees incident to transcribing,

32 certifying and transmitting the records pertaining to the  
33 matter to circuit court.

34 (d) The judgment of the circuit court reviewing the order  
35 of the commissioner is final unless reversed, vacated or  
36 modified on appeal to the Supreme Court of Appeals in  
37 accordance with the provisions of section one, article six,  
38 chapter twenty-nine-a of this code.

39 (e) Legal counsel and services for the commissioner in all  
40 the proceedings in any circuit court and the Supreme Court of  
41 Appeals shall be provided by the Attorney General or his or  
42 her assistants and in any proceedings in any circuit court by  
43 the prosecuting attorney of that county as well, all without  
44 additional compensation.

45 (f) Upon final revocation, the commissioner shall proceed  
46 to reissue the retail license by following the procedures set  
47 forth herein for the initial issuance of a retail license.

## ARTICLE 7. LICENSES TO PRIVATE CLUBS.

**§60-7-13a. Hearing on sanctioning of license; notice; review of  
action of commissioner; clerk of court to furnish  
commissioner copy of order or judgment of  
conviction of licensee; assessment of costs;  
procedure for appealing any final order of the  
commissioner which revokes, suspends, sanctions  
or denies the issuance or renewal of any license  
issued under this article.**

1 (a) The commissioner may not revoke or suspend a  
2 license issued pursuant to this article or impose civil penalties  
3 authorized under this article unless and until a hearing is held  
4 after at least ten days' notice to the licensee of the time and  
5 place of the hearing, which notice shall contain a statement  
6 or specification of the charges, grounds or reasons for the

7 proposed contemplated action, and which is served upon the  
8 licensee as notices under the West Virginia Rules of Civil  
9 Procedure or by certified mail, return receipt requested, to the  
10 address for which license was issued. At the time and place,  
11 designated in the notice, the licensee has the right to appear  
12 and produce evidence in his or her behalf, and to be  
13 represented by counsel: *Provided*, That the commissioner  
14 may forthwith suspend the license when the commissioner  
15 believes the public safety will be adversely affected by the  
16 licensee's continued operation.

17 (b) The commissioner may summon witnesses in the  
18 hearing before him or her, and fees of witnesses summoned  
19 on behalf of the state in proceedings to sanction licenses shall  
20 be treated as a part of the expenses of administration and  
21 enforcement. The fees shall be the same as those in similar  
22 hearings in the circuit courts of this state. The commissioner  
23 may, upon a finding of violation, assess a licensee a sum, not  
24 to exceed \$150 per violation, to reimburse the commissioner  
25 for expenditures of witness fees, court reporter fees and travel  
26 costs incurred in holding the hearing. Moneys so assessed  
27 shall be transferred to the Alcohol Beverage Control  
28 Enforcement Fund created by section thirteen of this article.

29 (c) If, at the request of the licensee or on his or her  
30 motion, the hearing is continued and does not take place on  
31 the day fixed by the commissioner in the notice of hearing,  
32 then the licensee's license may be suspended until the hearing  
33 and decision of the commissioner, and in the event of  
34 revocation or suspension of the license, upon hearing before  
35 the commissioner, the licensee is not permitted to sell  
36 alcoholic liquor or nonintoxicating beer pending an appeal as  
37 provided by this article. Any person continuing to sell  
38 alcoholic liquor or nonintoxicating beer after his or her  
39 license has been suspended or revoked, as provided in this  
40 section, is guilty of a misdemeanor and, shall be punished as  
41 provided in section twelve of this article.

42 (d) Notwithstanding the provisions of subsection (b),  
43 section four, article five, chapter twenty-nine-a of this code,  
44 the action of the commissioner in revoking, suspending,  
45 sanctioning or refusing a license is subject to review by the  
46 circuit court of Kanawha County or the circuit court in the  
47 county where the proposed or licensed premises is located  
48 and will or does conduct sales: *Provided*, That in all other  
49 respects, such review shall be conducted in the manner  
50 provided in chapter twenty-nine-a of this code. The petition  
51 for review must be filed with the circuit court within thirty  
52 days following entry of the final order of revocation,  
53 suspension, sanction or refusal issued by the commissioner.  
54 A licensee obtaining an order for the review is required to  
55 pay the costs and fees incident to transcribing, certifying and  
56 transmitting the records pertaining to the matter to the circuit  
57 court. An application to the Supreme Court of Appeals of  
58 West Virginia for a writ of error from any final order of the  
59 circuit court in the matter shall be made within thirty days  
60 from and after the entry of the final circuit court order.

61 (e) All such hearings, upon notice to show cause why  
62 license should be revoked, suspended, sanctioned or refused,  
63 before the commissioner shall be held in the offices of the  
64 commissioner in Charleston, Kanawha County, unless  
65 otherwise provided by the commissioner in the notice of  
66 hearing. When the hearing is held elsewhere than in the  
67 commissioner's office, the licensee may be required to make  
68 deposits of the estimated costs of the hearing.

69 (f) Whenever any licensee has been convicted of an  
70 offense constituting a violation of the laws of this state or of  
71 the United States relating to alcoholic liquor, or  
72 nonintoxicating beer, and the conviction has become final,  
73 the clerk of the court in which the licensee has been  
74 convicted shall forward to the commissioner a certified copy  
75 of the order or judgment of conviction if the clerk has  
76 knowledge that the person convicted is a licensee, together

77 with the certification of the clerk that the conviction is final.  
78 The commissioner shall report violations of any of the  
79 provisions of section twelve or twelve-a of this article to the  
80 prosecuting attorney of the county in which the licensed  
81 premises is located.

#### **ARTICLE 8. SALE OF WINES.**

##### **§60-8-18. Revocation, suspension and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.**

1 (a) The commissioner may on his or her own motion, or  
2 shall on the sworn complaint of any person, conduct an  
3 investigation to determine if any provisions of this article or  
4 any rule promulgated or any order issued by the  
5 commissioner has been violated by any licensee. After  
6 investigation, the commissioner may impose penalties and  
7 sanctions as set forth below.

8 (1) If the commissioner finds that the licensee has  
9 violated any provision of this article or any rule promulgated  
10 or order issued by the commissioner, or if the commissioner  
11 finds the existence of any ground on which a license could  
12 have been refused, if the licensee were then applying for a  
13 license, the commissioner may:

14 (A) Revoke the licensee's license;

15 (B) Suspend the licensee's license for a period  
16 determined by the commissioner not to exceed twelve  
17 months; or

18 (C) Place the licensee on probation for a period not to  
19 exceed twelve months; and

20 (D) Impose a monetary penalty not to exceed \$1,000 for  
21 each violation where revocation is not imposed.

22 (2) If the commissioner finds that a licensee has willfully  
23 violated any provision of this article or any rule promulgated  
24 or any order issued by the commissioner, the commissioner  
25 shall revoke the licensee's license.

26 (b) If a supplier or distributor fails or refuses to keep in  
27 effect the bond required by section twenty-nine of this article,  
28 the commissioner shall automatically suspend the supplier or  
29 distributor's license until the bond required by section twenty  
30 of this article is furnished to the commissioner, at which time  
31 the commissioner shall vacate the suspension.

32 (c) Whenever the commissioner refuses to issue a license,  
33 or suspends or revokes a license, places a licensee on  
34 probation or imposes a monetary penalty, he or she shall  
35 enter an order to that effect and cause a copy of the order to  
36 be served in person or by certified mail, return receipt  
37 requested, on the licensee or applicant.

38 (d) An applicant or licensee, as the case may be,  
39 adversely affected by the order has a right to a hearing before  
40 the commissioner if a written demand for hearing is served  
41 upon the commissioner within ten days following the receipt  
42 of the commissioner's order by the applicant or licensee.  
43 Timely service of a demand for a hearing upon the  
44 commissioner operates to suspend the execution of the order  
45 with respect to which a hearing has been demanded, except  
46 an order suspending a license under the provisions of  
47 subsection (b) of this section. The person demanding a  
48 hearing shall give security for the cost of the hearing in a  
49 form and amount as the commissioner may reasonably  
50 require. If the person demanding the hearing does not  
51 substantially prevail in the hearing or upon judicial review  
52 thereof as provided in subsections (g) and (h) of this section,

53 then the costs of the hearing shall be assessed against him or  
54 her by the commissioner and may be collected by an action  
55 at law or other proper remedy.

56 (c) Upon receipt of a timely served written demand for a  
57 hearing, the commissioner shall immediately set a date for the  
58 hearing and notify the person demanding the hearing of the  
59 date, time and place of the hearing, which shall be held  
60 within thirty days after receipt of the demand. At the hearing  
61 the commissioner shall hear evidence and thereafter enter an  
62 order supporting by findings of facts, affirming, modifying or  
63 vacating the order. Any such order is final unless vacated or  
64 modified upon judicial review thereof.

65 (f) The hearing and the administrative procedure prior to,  
66 during and following the hearing shall be governed by and in  
67 accordance with the provisions of article five, chapter twenty-  
68 nine-a of this code.

69 (g) Notwithstanding the provisions of subsection (b),  
70 section four, article five, chapter twenty-nine-a of this code,  
71 an applicant or licensee adversely affected by a final order  
72 entered following a hearing has the right of judicial review of  
73 the order code in the circuit court of Kanawha County or the  
74 circuit court in the county where the proposed or licensed  
75 premises is located and will or does conduct sales: *Provided,*  
76 That in all other respects, such review shall be conducted in  
77 the manner provided in chapter twenty-nine-a of this code.  
78 The petition for the review must be filed with the circuit court  
79 within thirty days following entry of the final order issued by  
80 the commissioner. An applicant or licensee obtaining judicial  
81 review is required to pay the costs and fees incident to  
82 transcribing, certifying and transmitting the records  
83 pertaining to the matter to circuit court.

84 (h) The judgment of the circuit court reviewing the order  
85 of the commissioner is final unless reversed, vacated or

86 modified on appeal to the Supreme Court of Appeals in  
87 accordance with the provisions of section one, article six,  
88 chapter twenty-nine-a of this code.

89 (i) Legal counsel and services for the commissioner in all  
90 proceedings in any circuit court and the Supreme Court of  
91 Appeals shall be provided by the Attorney General or his or  
92 her assistants and in any proceedings in any circuit court by  
93 the prosecuting attorney of that county as well, all without  
94 additional compensation.

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

*Rocky Ferguson*  
Member ~~Chairman~~ Senate Committee

*Dennis Wall*  
~~Speaker of the House~~  
Chairman House Committee

2013 APR 29 PM 5:11  
SECRETARY OF STATE  
GNA

FILED

Originated in the Senate.

To take effect July 1, 2013.

*Joseph M. Minard*  
Clerk of the Senate

*Bugs & Co*  
Clerk of the House of Delegates

*Jeffery K. Kiser*  
President of the Senate

*Rocky*  
Speaker of the House of Delegates

The within *is approved* this the *29th*  
Day of *April*, 2013.

*Earl Ray Tomblin*  
Governor

PRESENTED TO THE GOVERNOR

APR 26 2013

Time 10:30 am