WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 298

BY SENATOR WALTERS, original sponsor

[Passed March 12, 2016; in effect 90 days from passage]
Enr. CS for SB 298

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[Passed March 12, 2016; in effect 90 days from passage]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp; to amend and reenact §11-16-18 of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-7-12 of said code; and to amend and reenact §60-8-34 of said code, all relating to regulation of alcoholic liquor, wine and non-intoxicating beer generally; allowing county commissions to conduct a county option election on the question of whether to allow restaurants, private clubs, Class A retailers, wineries and wine serving entities to sell alcoholic liquors, wine and non-intoxicating beer as their licenses allow, and distilleries and mini-distilleries to offer complimentary samples of alcohol beginning at 10:00 a.m. on Sundays for on-premises consumption only; and establishing publication requirements for providing notice of election.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-3pp; that §11-16-18 of said code be amended and reenacted; that §60-4-3a and §60-4-3b of said code be amended and reenacted; that §60-7-12 of said code be amended and reenacted; and that §60-8-34 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3pp. County option election on allowing nonintoxicating beer, wine or alcoholic liquors to be sold, given or dispensed after ten o’clock a.m. on Sundays.

The county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine or alcoholic liquors in or on premises shall be allowed in the county beginning ten o’clock a.m. on any Sunday, as provided in section eighteen, article sixteen, chapter eleven, sections three-a and three-b, article four,
chapter sixty of this code, section twelve, article seven, of said chapter, and section thirty-four, article eight, of said chapter, upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election. On the local option election ballot shall be printed the following: “Shall the beginning hour at which non-intoxicating beer, wine and alcoholic liquor be sold or dispensed for on premises consumption only in ________ County on Sundays be changed from one o’clock p.m. to ten o’clock a.m.

If approved by the voters this would allow private clubs and restaurants licensed to sell and dispense non-intoxicating beer, wine and alcoholic liquor; licensed private wine restaurants, private wine spas, private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on premises consumption only beginning at ten o’clock a.m. Additionally, if approved, it would also allow any mini-distilleries, wineries or farm wineries in this county to offer complimentary samples for on premises consumption only beginning at ten o’clock a.m.”

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked “Yes” all applicable licensees shall be permitted prohibited to sell and dispense beer, wine or alcoholic liquors beginning at ten o’clock a.m. on Sundays. In the event a majority of the votes are marked “No” all applicable licensees will continue to be required to comply with existing law.
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, 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., or a Class A retail dealer who sells nonintoxicating beer for on premises consumption only between the hours of two o’clock a.m. and ten o’clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, 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 in this section prohibits 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 shall initiate the transfer no later than noon of one business day after the delivery;
(5) For any brewer or distributor or brew-pub 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 in this section prohibits 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 with it: 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 where 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 in this section is considered to prohibit sales of convenience between distributors licensed in this state where 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 $25, nor more than $500, 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 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 deciphering 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 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 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.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) Sales of liquor. — An operator of a distillery or a mini-distillery may offer liquor for retail sale to customers from the distillery or the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter,
customers are prohibited from consuming any liquor on the premises of the distillery or the mini-
distillery: Provided, That a licensed distillery or mini-distillery may offer complimentary samples
per this subsection of alcoholic liquors manufactured by that licensed distillery or mini-distillery for
consumption on the premises only on Sundays beginning at ten o’clock a.m. in any county in
which the same has been approved as provided for in section three-pp, article one, chapter seven
of this code.

(b) Retail sales. — Every licensed distillery or mini-distillery shall comply with the
provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two,
twenty-three, twenty-four, twenty-five and twenty-six, article three-a of this chapter and the
provisions of articles three and four of this chapter applicable to liquor retailers and distillers.

(c) Payment of taxes and fees. — The distillery or mini-distillery shall pay all taxes and
fees required of licensed retailers and meet applicable licensing provisions as required by this
chapter and by rule of the commissioner, except for payments of the wholesale markup
percentage and the handling fee provided by rule of the commissioner: Provided, That all liquor
for sale to customers from the distillery or the mini-distillery for off-premises consumption shall be
subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid
to the commissioner: Provided, however, That no liquor sold by the distillery or mini-distillery shall
be priced less than the price set by the commissioner pursuant to section seventeen, article three-a
of this chapter.

(d) Payments to market zone retailers. — Each distillery or mini-distillery shall submit to
the commissioner two percent of the gross sales price of each retail liquor sale for the value of all
sales at the distillery or the mini-distillery each month. This collection shall be distributed by the
commissioner, at least quarterly, to each market zone retailer located in the distillery or mini-
distillery’s market zone, proportionate to each market zone retailer’s annual gross prior years
pretax value sales. The maximum amount of market zone payments that a distillery or mini-
distillery shall be required to submit to the commissioner is $15,000 per annum.
(e) **Limitations on licensees.** — No distillery or mini-distillery may sell more than three thousand gallons of product at the distillery or mini-distillery location the initial two years of licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery location by two thousand gallons following the initial twenty-four-month period of licensure and may increase sales at the distillery or mini-distillery location each subsequent twenty-four-month period by two thousand gallons, not to exceed ten thousand gallons a year of total sales at the distillery or mini-distillery location. No licensed mini-distillery may produce more than fifty thousand gallons per calendar year at the mini-distillery location. No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) **Sales of wine.** — An operator of a winery or farm winery may offer wine produced by the winery or farm winery for retail sale to customers from the winery or farm winery for consumption off the premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any wine on the premises of the winery or farm winery, unless such winery or farm winery has obtained a multicapacity winery or farm winery license: Provided, That a licensed winery or farm winery may offer complimentary samples per this subsection of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at ten o'clock a.m. in any county in which the same has been approved as provided in section three-pp, article one, chapter seven of this code.

(b) **Retail sales.** — Every licensed winery or farm winery shall comply with the provisions of articles three, four and eight of this chapter as applicable to wine retailers, wineries and suppliers when properly licensed in such capacities.

(c) **Payment of taxes and fees.** — The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this
chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier
shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each
month, as provided in article eight of this chapter.

(d) Advertising. — A winery or farm winery may advertise a particular brand or brands of
wine produced by it, and the price of the wine subject to federal requirements or restrictions.

(e) Limitations on licensees. — A winery or farm winery must maintain separate winery or
farm winery supplier, retailer and direct shipper licenses when acting in one or more of those
capacities, and must pay all associated license fees, unless such winery or farm winery holds a
license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article
eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity
winery or farm winery license, may act as its own supplier; retailer for off-premises consumption
of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct
shipper for wine produced by the winery or farm winery. All wineries must use a distributor to
distribute and sell their wine in the state, except for farm wineries. No more than one winery or
farm winery license may be issued to a single person or entity and no person may hold both a

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such
licensee’s premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or
container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper
entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine,
multiple coin console slot machine or device in the nature of a slot machine;
(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee’s premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o’clock a.m. and one o’clock p.m., or, between the hours of three o’clock a.m. and ten o’clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;
(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee’s premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of two o’clock a.m. and one o’clock p.m., or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant or private wine spa, his or her servants, agents or employees to sell wine between the hours of two o’clock a.m. and ten o’clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on Sundays, or between the hours of two o’clock a.m. and seven o’clock a.m. on weekdays and Saturdays.
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 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill approved this the 29th Day of March, 2016.

Governor
PRESENTED TO THE GOVERNOR

MAR 28 2018

Time: 3:05 pm