# WEST VIRGINIA CODE CHAPTER 60 ARTICLE 1

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## §60-1-1. Purpose of chapter; declaration of legislative findings, policy and intent.

The purpose of this chapter is to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment; and it is hereby found by the Legislature and declared to be the public policy of this state to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of alcoholic liquors and at the same time to assure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this state. To these ends the police power of this state is pledged to the sound control and the temperate use of alcoholic liquors. In order to further promote and foster the hereinabove policy of the Legislature, the provisions of this chapter and of the rules and regulations promulgated pursuant thereto shall be construed so as to accomplish and effectuate these stated purposes.

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## §60-1-2. Applicability of chapter.

A person shall not sell, possess for sale, transport, or distribute alcoholic liquors in this state except in accordance with the provisions of this chapter.

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## §60-1-3. Restrictions on sale, manufacture or consumption; exceptions.

Subject to the provisions of this chapter, alcoholic liquors, in this state:

(1) Shall be sold only in sealed packages, except by organizations licensed under authority of article seven of this chapter.

(2) Shall not be sold for consumption on the premises where sold, except as authorized by article seven of this chapter.

(3) Shall be manufactured only by persons licensed under the provisions of this chapter.

(4) Shall not be consumed or sold for consumption in a public place.

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## §60-1-3a. Off-premises sales not required to be bagged.

Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

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## §60-1-4. Sales to be made by or through West Virginia Alcohol Beverage Control Commissioner.

Alcoholic liquors shall be sold at wholesale and retail in this state only by or through the West Virginia Alcohol Beverage Control Commissioner or retail agencies established by him or any predecessor commissioners or commission, except as authorized by articles seven and eight of this chapter.

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**§60-1-5. Definitions.**

For the purposes of this chapter:

(1) “Alcohol” means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

(2) “Alcoholic liquor” includes alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

(3) “An agency” means a drugstore, grocery store, or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commission.

(4) “Beer” means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

(5) “Brewery” means an establishment where beer is manufactured or in any way prepared.

(6) “Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

(7) “Department” means the organization through which the commission exercises powers imposed upon it by this chapter.

(8) “Distillery” means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

(9) “Intoxicated” means a person’s faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.

(10) “Manager” means an individual who is the applicant’s or licensee’s on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

(11) “Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

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(12) “Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

(13) “Nonintoxicating beer” means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by §11-16-2 of this code.

(14) “Original package” means any closed or sealed container or receptacle used for holding alcoholic liquor.

(15) “Person” means an individual, firm, partnership, limited partnership, corporation, or voluntary association.

(16) “Powdered alcohol” means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.

(17) “Public place” means any place, building, or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement: *Provided,* That the term “public place” shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises: *Provided, however,* That the term “public place” shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this chapter to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term “public place” shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of §60-8-3 of this code, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

(18) “Sale” means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.

(19) “Selling” includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

(20) “Spirits” means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

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(21) “State liquor store” means a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

(22) “Wine” means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

(23) “Winery” means an establishment where wine is manufactured or in any way prepared.

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## §60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter "Farm winery" means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

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## §60-1-5b. Mini-distilleries defined.

For the purpose of this chapter: “Mini-distillery” means an establishment where in any year no more than 50,000 gallons of alcoholic liquor is manufactured with no less than 25% of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than 25% of raw agricultural products originating from any source outside this state: *Provided,* That the maximum allotted production amounts shall not exceed the annual incremental production limitations provided for pursuant to section three-a of this article.

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**§60-1-5c. Alternating wine proprietorships; requirements and limitations.**

(a) Notwithstanding the provisions of §60-1-5 of this code, a licensed winery or farm winery may be a party to an alternating wine proprietorship agreement subject to the provisions of this section. As used in this section, "alternating wine proprietorship agreement" means an agreement between a licensed winery or farm winery and a farm entity which allows the farm entity to use the premises of the licensed farm winery to produce wine.

(b) For an alternating wine proprietorship agreement to be lawful:

(1) The farm winery and the farm entity must be in compliance with applicable state laws and rules promulgated thereunder;

(2) The agreement must be between a licensed winery or farm winery and a farm entity located and operating in this state;

(3) The farm entity must produce agricultural products containing sugar as certified by the Agriculture Commissioner and required by law;

(4) Wines produced by the parties must be maintained in separate bonded areas and shall not be comingled;

(5) The farm entity participating in the agreement must separately meet all federal and state requirements for a winery or farm winery;

(6) The farm entity party to the agreement may not produce more than 50,000 gallons of wine and nonfortified dessert wine;

(7) Wine produced by the farm entity party to an agreement must be produced exclusively by natural fermentation;

(8) If port, sherry, or madeira wines are produced by the farm entity party to the agreement, a minimum of 25 percent of the agricultural products used to make the wine must be produced on the farm entity’s property and no more than 25 percent of the agricultural products used may come from an out-of-state source; and

(9) Port, sherry, or madeira wine produced by a party to an alternating wine proprietorship agreement may not exceed 22 percent alcohol by volume and must be matured in wooden barrels or casks.

(c) The commissioner shall propose rules for promulgation in accordance with §29A-3-1 et seq. of this code necessary to effectuate the provisions of this section.

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## §60-1-5d Micro-distilleries defined.

For the purposes of Chapter 60 of this code “Micro-distillery” means an establishment where in any one year no more than 10,000 gallons of alcoholic liquor is manufactured and no more than 25% of raw agricultural products used in production may originate from outside this state is used in distillation.

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## §60-1-6. How chapter cited.

This chapter may be cited as the "Alcohol Beverage Control Act".

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## §60-1-7. Applicability of chapter to nonintoxicating beer.

The provisions of this chapter do not apply to nonintoxicating beer except as is otherwise specifically provided.

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