

Rec., May 15

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ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 78

(By Mr. Thomas)

Passed May 10, 1933

In Effect from Passage

Originated in the House
Takes effect
Passage
Clerk
Clerk of the House of Delegates
CORRECTLY ENROLLED

James I. Smith
Chairman House Committee
James I. Smith
Chairman Senate Committee

ENROLLED BILL

(H. B. No. 78)

[Passed May 10, 1933; in effect from passage.]

AN ACT to amend and reenact section one, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by house bill number three hundred fifty-nine, enacted into law by the legislature of West Virginia on the eleventh day of March, one thousand nine hundred thirty-three, in effect ninety days from passage, defining the word "liquors;" to reenact section five, article one, chapter sixty of said code, as amended and reenacted by house bill number two hundred ten, enacted into law by the legislature of West Virginia on the ninth day of March, one thousand nine hundred thirty-three, and to provide more effectively for the collection of revenue from the manufacture, distribution and sale of intoxicating liquors and nonintoxicating liquors and beverages as herein defined.

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James L. Smith
James D. Hays

Chairman House Committee.

Chairman Senate Committee.

WHEREAS, The regular session of the legislature of West Virginia, one thousand nine hundred thirty-three, enacted house bill number three hundred fifty-nine, providing, among other things, for the raising of additional revenue by a tax upon the sale of non-intoxicating beer; and

WHEREAS, At this extraordinary session of said legislature, house bill number eight has been enacted into law, defining and providing for the raising of additional public revenue by the imposition of a tax on the manufacture, distribution and sale of nonintoxicating beer, and repealing said house bill number three hundred fifty-nine; and

WHEREAS, The constitutionality of the laws aforesaid has been so challenged as to interfere with and obstruct the collection of the revenues provided for therein; therefore

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by house bill number three hundred fifty-nine, enacted into law on the eleventh day of March, one thousand nine hundred thirty-three, be amended and reenacted; and that section five, article one, chapter sixty of said code, as amended and reenacted by

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Chairman House Committee.
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Chairman Senate Committee.

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house bill number two hundred ten, enacted into law on the ninth day of March, one thousand nine hundred thirty-three, be re-enacted, each to read as follows:

Section 1. The word "liquors," as used in this chapter, shall
2 be construed to mean and embrace all spirituous liquors, vinous
3 liquors, wine, porter, malt liquors, beer, lager beer, ale and
4 mixtures or preparations of like nature containing more than
5 three and two-tenths per cent of alcohol by weight; also all
6 liquids, mixtures or preparations, whether patented or not, con-
7 taining more than three and two-tenths per cent of alcohol, by
8 weight, which will produce intoxication. All such liquors,
9 wines, beers, malt or brewed drinks, and mixtures or prepara-
10 tions of like nature, containing three and two-tenths per cent
11 of alcohol, by weight, or less, are hereby declared to be non-
12 intoxicating, and together with liquids, mixtures or prepara-
13 tions whether patented or not, containing more than three and
14 two-tenths per cent of alcohol by weight, which will not pro-
15 duce intoxication, are not to be considered as, or held to be,
16 embraced within the word "liquors" as used in this chapter:
17 *Provided*, That in the issuance of permits for the sale of
18 liquors as provided in section five of this chapter the state tax

James A. Hyatt

Chairman Senate Committee.

James E. Smith

Chairman House Committee.

19 commissioner shall have authority to determine what liquids,
20 mixtures, liquids and preparations containing more than three
21 and two-tenths per cent of alcohol, by weight, will produce
22 intoxication.

Sec. 5. The provisions of this chapter shall not be con-
2 strued to prevent anyone from manufacturing (other than by
3 "moonshine still"), from fruit grown exclusively in this state,
4 nonintoxicating wine for his own domestic consumption; or to
5 prevent the manufacture from fruit grown exclusively within
6 this state of vinegar and nonintoxicating cider for use or sale;
7 or to prevent the manufacture and sale of pure grain alcohol,
8 at wholesale, to druggists, hospitals, sanitariums, laboratories
9 and manufacturers of medicinal, pharmaceutical, scientific and
10 medicinal purposes, or of wine for sacramental purposes by
11 religious bodies; or to prevent the manufacture and sale of
12 spirituous liquors to druggists, or to prevent the sale and keep-
13 ing and storing for sale by druggists of wine for sacramental
14 purposes by religious bodies, or any United States pharma-
15 copoeia or national formulary preparation in conformity with
16 the West Virginia pharmacy law, or any preparation which is
17 exempted by the provisions of the national pure food law; or

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Hiram A. Rogers

Chairman House Committee.

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18 to prevent the sale by druggists, through pharmacists, of pure
19 grain alcohol for medicinal, scientific, pharmaceutical and
20 mechanical purposes; or to prevent the use of such alcohol by
21 physicians, dentists and veterinarians in the practice of their
22 profession; or to prevent the medication and sale of pure grain
23 alcohol according to formulae and under regulations of the
24 national prohibition act; or to prevent the sale by druggists,
25 through pharmacists, of spirituous liquors under prescriptions
26 properly issued by licensed physicians in conformity and in ac-
27 cordance with the provisions of title II of the act of congress
28 known as national prohibition act, passed October twenty-eight,
29 one thousand nine hundred nineteen, or any subsequent amend-
30 ment thereto; or to prevent the purchase and use in the manu-
31 facture of medicinal preparations and compounds by wholesale
32 druggists only of sherry wine in quantities not exceeding twenty-
33 five wine gallons during any period of ninety days:

34 *Provided*, That no one shall manufacture, sell, keep for sale,
35 purchase or transport any liquors, as defined in section one of
36 this article and as herein excepted, without first obtaining a
37 permit from the tax commissioner so to do. Forms of applica-
38 tions and permits shall be prepared by the tax commissioner

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James L. Smith
Chairman House Committee.
D. Hyman
Chairman Senate Committee.

39 and a fee for each permit issued shall be collected by him as
40 follows:

41 (a) All manufacturers of liquors and wholesale dealers
42 therein shall pay a fee of fifty dollars for each permit;

43 (b) All purchasers in wholesale quantities of ethyl alcohol
44 in any form, whether pure, medicated or denatured, for use as
45 herein provided, shall pay a fee of ten dollars for each permit;

46 (c) All purchasers in wholesale quantities of liquors as de-
47 fined in section one of this article for sale at retail, except duly
48 licensed druggists, shall pay a fee of two dollars for each permit;

49 (d) All persons except duly licensed druggists registering
50 stills and given permits to use the same for lawful purposes
51 shall pay a fee of five dollars for each permit: *Provided*, That
52 any still used only for the manufacture of chemicals, including
53 water, in which the process of distillation is a common and nec-
54 essary operation, and which still shall not be used for the
55 distillation of ethyl alcohol in any form, shall be required to
56 be registered, but the owner and operator thereof shall not be
57 required to obtain a permit therefor, or to pay license tax
58 thereon. No fee shall be required for a permit to obtain wine
59 for sacramental or religious rites;

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James A. Hays

James L. Smith

Chairman Senate Committee.

Chairman House Committee.

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60 (e) All purchasers of spirituous liquors shall be required to
61 pay a fee of fifty cents per pint, such fee to be represented by
62 a stamp furnished to druggists and duly cancelled by the ini-
63 tials in ink of the person affixing the same. Said stamp shall be
64 prepared by the state tax commissioner and sold by him to the
65 parties permitted by law to handle the same. The persons for
66 whom the prescriptions are given shall pay for the stamps
67 affixed thereto.

68 Permits shall be issued for the calendar year and shall expire
69 on the thirty-first day of December next following the issuance
70 thereof. All moneys received by the state tax commissioner
71 shall belong to the state and shall be by him immediately paid
72 into the state treasury:

73 *Provided further,* That such liquors shall be manufactured,
74 sold, kept for sale, transported and used under permits issued
75 by the federal prohibition commissioner and in accordance with
76 regulations issued in pursuance of the national prohibition act.

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James G. Smith
Chairman Senate Committee.

R. M. Hiner
Speaker of the House of Delegates.

Geo. S. Hall
Clerk of the House of Delegates.

H. M. Ainsworth
President of the Senate.

James G. Smith
Clerk of the Senate.

The within is... *approved*...

this... *16th*... day of... *May*..., 1933.

H. S. Thompson
Governor.

Filed in the office of the Secretary of State
of West Virginia. *MAY 17 1933*
Wm. S. O'BRIEN,
Secretary of State