

Rec., Apr. 12

#8

ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 8

(By Mr. Beacom)

Passed April 12, 1933

In Effect from Passage

Originated in the.....*House*.....Takes effect.....*January 1, 1934*.....Passage

James L. Smith
Clerk of the House of Delegates.

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Ray W. Garvin
Chairman Senate Committee.

James L. Smith
Chairman House Committee.

ENROLLED BILL

(H. B. No. 8)

[Passed April 12, 1933; in effect from passage.]

AN ACT to amend and reenact section one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, and to amend article twelve, chapter eleven of said code by enacting and adding thereto thirteen additional sections to be numbered ninety-one, ninety-two, ninety-three, ninety-three-(a), ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one and one hundred two, to provide for the raising of additional public revenue by a license tax on the business of selling non-intoxicating beer, to define nonintoxicating beer, to classify sellers thereof, and to provide for the collection of such tax, and to repeal chapter twenty-four, acts of the legislature, regular session, one thousand nine hundred thirty-three, being house bill number three hundred fifty-nine of that session, and

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all other acts and parts of acts, general and special, in conflict with this act or the purpose thereof.

Be it enacted by the Legislature of West Virginia:

That section one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be and the same is hereby amended and reenacted, and article twelve, chapter eleven of the said code be and the same is hereby amended by enacting and adding thereto thirteen additional sections to be numbered sections ninety-one, ninety-two, ninety-three, ninety-three-(a), ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one and one hundred two, which sections shall read as follows:

Section 1. No person without a state license therefor, shall

2 (a) Keep a hotel, eating house, or restaurant; or

3 (b) Keep, for public use or resort, a bowling alley, pool
4 table, billiard table, bagatelle table, or any table of like kind;

5 or

6 (c) Sell at wholesale or retail patent or proprietary medi-
7 cines in incorporated cities and towns; or

8 (d) Exhibit any circus, menagerie, circus and menagerie
9 combined, theatrical performance, street or other carnival, or

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10 public show, to which admission is obtained for money or re-
11 ward, except for the benefit or under the auspices of a volun-
12 teer fire dapartment; or

13 (e) Run or operate, for profit, a merry-go-round, or roller
14 coaster, or scenic railway, or like device, or keep for public use
15 or resort, a shooting gallery, a skating rink; or run, or operate,
16 a cane rack, doll baby rack, knife rack, striking machine, jingle
17 board, punch board, artful dodger, candy wheel, or other scheme
18 or device by which merchandise or other things of value are dis-
19 posed of by game of chance, or like device, or human laundry
20 device, or dip device; or

21 (f) Act as a hawker or peddler; but bona fide farmers ven-
22 ding farm products shall not be required to have a license; or

23 (g) Act as an auctioneer; or

24 (h) Practice the business of real estate agent, stockbroker,
25 or other broker, by buying or selling for others, stock, securi-
26 ties, or any other property for a commission or reward; or

27 (i) Practice the business of money broker, buying or sell-
28 ing undercurrent or depreciated money or funds; or exchanging
29 one kind of money or funds for another, for benefit or reward;
30 or

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31 (j) Practice the business of pawnbroker by lending money
32 or other things for profit, for or on account of personal prop-
33 erty deposited with the lender in pledge; or

34 (k) Sell, or barter, or offer, or expose, for sale or barter, any
35 patent right; or

36 (l) Sell, offer, or expose for sale, to merchants, trading
37 stamps, premium stamps or certificates of like nature or char-
38 acter, or undertake with merchants to redeem such stamps or
39 certificates in money or goods; or

40 (m) Being a traveling agent, canvasser or salesman, or itin-
41 erant vendor, sell any sewing machines, pianos, organs, victrolas,
42 phonographs, talking machines, or similar musical instruments,
43 or, sell or contract to sell any books, maps, prints, pamphlets,
44 and periodicals, except such books, pamphlets and periodicals
45 that be of a religious or ethical nature, whether manufactured
46 within or without the state; or

47 (n) Sell, offer or expose for sale, or solicit, or receive orders
48 for manufactured tobacco, snuff, cigars, cigarettes, or other
49 preparations of tobacco, or cigarette paper or wrapper, at
50 wholesale or retail; or

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51 (o) Carry on the business of junk dealer, or act as agent,
52 solicitor, canvasser, or salesman, for any junk dealer; or

53 (p) Sell pistols, revolvers, or weapons of like kind; or

54 (q) Maintain or occupy any house boat, or like structure
55 or vessel, upon or along the bed, banks or shores of any navi-
56 gable stream; or

57 (r) Maintain any slot machine, or other automatic device,
58 which, for the same profit or reward, in each case, and without
59 any violation of the law, furnishes music, or exhibits pictures,
60 or provides facilities for weighing, or supplies any merchandise
61 or other thing or renders any service; but no slot machine or

62 other automatic device with respect to which, or its operation,
63 service, or supplies, there is any element of chance (being a gam-
64 ing table, within the meaning of section one, **article ten, chapter**
65 sixty-one of this code), shall be protected by any license; or

66 (s) Being a corporation, heretofore or hereafter chartered
67 under the laws of this state, whether its principal place of busi-
68 ness or chief works be within or without the state, do, or attempt
69 to do, any business by virtue of its charter or certificate of in-
70 corporation; or

71 (t) Being a corporation chartered or organized under the

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72 laws of any other state or country, hold property or transact
73 business in this state; or being a corporation, hold more than
74 ten thousand acres of land in this state; or

75 (u) Solicit, carry on or practice the business of a collection
76 agency, or association, whether it be a person, firm or corpo-
77 ration; or

78 (v) Keep or maintain, a public park, admission to which
79 is obtained for money or reward; or

80 (w) Carry on the business of a labor agency; or

81 (x) Manufacture, sell or distribute, either at retail or whole-
82 sale, any and all preparations of every kind, character or na-
83 ture, such as are prepared, mixed and sold at a soda fountain,
84 and all such preparations as bevo, pablo, milo, moxie, ginger ale,
85 near beer, coca cola, pop, and all other preparations of like
86 nature and character commonly known as soft drinks; or

87 (y) Keep or maintain, for public use or resort, a taxi-cab
88 stand or any place of like character; or

89 (z) Manufacture, sell or distribute, either at retail or whole-
90 sale, nonintoxicating beer as defined in section ninety-one of this
91 act.

92 Nothing in this article contained, and no license or payment

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93 under the provisions hereof, shall be taken to legalize any act
94 which otherwise may be in violation of law, or exempt any per-
95 son from any penalty prescribed for such violation.

Sec. 91. The words "nonintoxicating beer," as used in this
2 act, shall be construed to embrace all beer, lager beer, ale, por-
3 ter, malt liquors, and all other mixtures and preparations of
4 like nature containing not more than three and two-tenths per
5 cent of alcohol by weight, which are hereby declared to be
6 nonintoxicating; and the word "liquors" as used in chapter
7 sixty of the code of West Virginia shall not be construed to
8 include or embrace any beer, lager beer, ale, porter, malt liquors,
9 or any other mixture or preparation of like nature containing
10 not more than three and two-tenths per cent of alcohol by weight.

Sec. 92. The words "package dealer," as used in this act,
2 shall mean and include any person, firm, association, partner-
3 ship, or corporation selling, delivering or otherwise distributing
4 within the state of West Virginia nonintoxicating beer for con-
5 sumption at a place other than his, its, or their established and
6 licensed place of business in original packages containing not
7 less than six bottles of not more than twelve fluid ounces each,
8 and in total quantities at each sale of not more than forty-eight

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9 bottles of twelve fluid ounces each. The word "dispenser," as
10 used in this act, shall mean and include any person, firm, asso-
11 ciation, partnership or corporation, selling, serving, delivering
12 or otherwise dispensing nonintoxicating beer, whether in glass
13 bottles or on draught, for consumption at his, its, or their estab-
14 lished and licensed place of business. The words "manufac-
15 turer or brewer," as used in this act, shall mean and include
16 any person, firm, association, partnership or corporation manu-
17 facturing, in this state, nonintoxicating beer for sale at whole-
18 sale. The word "distributor," as used in this act, shall mean
19 and include any person, firm, association, partnership, or cor-
20 poration, other than a manufacturer or brewer, jobbing or dis-
21 tributing nonintoxicating beer to a package dealer or dispenser
22 at wholesale.

Sec. 93. There is hereby levied and imposed upon package
2 dealers, as herein defined, an annual license tax of fifty dollars,
3 and upon dispensers, as herein defined, an annual license tax of
4 one hundred dollars. There is hereby levied and imposed upon
5 manufacturers or brewers, as herein defined, manufacturing
6 nonintoxicating beer within this state, an initial license tax
7 of five hundred dollars per year and, whether such nonintoxi-

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8 eating beer be kept or sold in barrels or other containers, an
9 additional tax of one dollar on each barrel of thirty-one gallons,
10 and in like ratio on each part barrel so manufactured in this
11 state. There is hereby levied and imposed upon distributors, as
12 herein defined, an initial license tax of two hundred fifty dollars
13 per year, and an additional tax of one dollar on each barrel, and
14 in like ratio on each part barrel of nonintoxicating beer, whether
15 distributed in barrels or other containers, so distributed in this
16 state: *Provided, however,* That the barrel tax herein levied
17 shall, as to nonintoxicating beer made in West Virginia, be paid
18 by the manufacturer or brewer, and the barrel tax on non-
19 intoxicating beer made outside of West Virginia shall be paid
20 by the original consignee thereof within this state, who shall
21 be deemed the distributor for the purposes of this act, and no
22 nonintoxicating beer manufactured, sold or distributed in West
23 Virginia shall be subject to more than one barrel tax.

24 Each such package dealer, dispenser, manufacturer or brewer
25 and distributor being engaged in the business of selling, de-
26 livering or otherwise distributing nonintoxicating beer, and
27 having more than one place of business within the state of West

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28 Virginia, shall pay the full amount of the initial tax hereby
29 imposed for each such place of business: *Provided further,*
30 That any social, fraternal or business clubs not operating for
31 profit, and having been in continuous operation for five years
32 or more prior to the enactment of this law, shall pay an annual
33 license tax of fifty dollars, as a dispenser hereunder: *And pro-*
34 *vided further,* That railroads operating in this state may dis-
35 pense nonintoxicating beer upon payment of an annual license
36 tax of ten dollars for each dining, club or buffet car in which
37 it is dispensed.

Sec. 93-(a). No person, firm or corporation having an in-
2 terest in the manufacture or wholesale distribution of non-
3 intoxicating beer shall be permitted, either directly or indi-
4 rectly, to be connected with, or have an interest in the sale or
5 dispensing of nonintoxicating beer, either under a package
6 dealer or a dispenser's license.

Sec. 94. Licenses for the sale of nonintoxicating beer shall
2 be for the term of one year commencing on the first day of July
3 of each year and ending on the thirtieth day of June of the
4 following year. If granted for a less period than one year the
5 initial state tax thereon shall be computed quarterly from the

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6 annual tax in proportion to such time as the license has to run :
7 *Provided*, That all licenses issued prior to the first day of July,
8 one thousand nine hundred thirty-three, shall be issued to ex-
9 pire on the thirtieth day of June, one thousand nine hundred
10 thirty-four, and the initial tax assessed upon any such license
11 shall be for one and one-fourth year.

Sec. 95. All licenses under this act for manufacturers, brew-
2 ers, distributors, package dealers and dispensers shall be issued
3 by the tax commissioner.

4 Each such package dealer, on or before the first day of July
5 of any year, shall make out and deliver to the state tax com-
6 missioner upon a blank to be furnished by such commissioner
7 for that purpose, a statement showing the name of such package
8 dealer, a brief and accurate description of the place or places
9 where his business as such package dealer is conducted, and by
10 whom owned. Such statement shall be signed and sworn to be-
11 fore a notary public or other officer empowered to take such
12 acknowledgment to deeds.

13 Every manufacturer or brewer and distributor, applying
14 for a license under this act for the period expiring on the
15 thirtieth day of June, one thousand nine hundred thirty-four,

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16 shall furnish a bond with approved security, payable to the
17 state of West Virginia in the minimum amount of one thousand
18 dollars and within the discretion of the tax commissioner in
19 the maximum amount of ten thousand dollars, conditioned for
20 the payment of any and all additional taxes accruing during
21 the period of such license.

22 On or before the tenth day of each calendar month during
23 the license tax period ending on the thirtieth day of June, one
24 thousand nine hundred thirty-four, every such manufacturer
25 or brewer and distributor shall make a report in writing, under
26 oath, to the tax commissioner, in such form as may be required
27 by him, showing the number of barrels of nonintoxicating beer
28 manufactured or distributed by such manufacturer or brewer
29 or distributor for the preceding calendar month or part thereof
30 during which such manufacturer or brewer or distributor was
31 engaged in business, and at the same time pay the tax thereon
32 levied by this act.

33 On or before the thirtieth day of June, one thousand nine
34 hundred thirty-four, and on or before the thirtieth day of June
35 in each succeeding year, every manufacturer or brewer and
36 distributor desiring a license under the terms of this act shall

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37 file with the application for such license a report in writing,
38 under oath, showing the estimated number of barrels of non-
39 intoxicating beer to be manufactured, sold or distributed during
40 the next succeeding license tax year, based upon the average
41 number of barrels manufactured, sold or distributed during the
42 preceding five years or such part thereof as such manufacturer
43 or brewer or distributor has been engaged in business; and in
44 addition to the initial tax shall pay the tax levied by this act
45 on such estimated annual production, sale or distribution of
46 nonintoxicating beer for the succeeding year. Within thirty
47 days after the end of any license tax year each manufacturer
48 or brewer and distributor shall make report in writing, under
49 oath, to the tax commissioner, in such form as may be required
50 by him, showing the number of barrels of nonintoxicating beer
51 manufactured or distributed by such manufacturer or brewer
52 or distributor for the preceding license tax year, or part there-
53 of, during which such manufacturer or brewer or distributor
54 was engaged in business. If the actual number of barrels
55 manufactured, sold, or distributed shall exceed the estimate
56 on which the tax was assessed such manufacturer or brewer or
57 distributor at the time of filing such report shall pay the tax

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58 commissioner a further tax on such excess, to be ascertained by
59 applying the rate fixed by this act; or if the actual number of
60 barrels be less than the estimate on which the tax was assessed
61 then there shall be refunded out of the state treasury a sum
62 to be ascertained by applying the rate fixed by this act.

Sec. 96. If any manufacturer or brewer or distributor whose
2 report to the tax commissioner provided for in the next pre-
3 ceding section hereof shows him, it or them to be liable for any
4 unpaid license taxes shall fail to pay the same to the tax com-
5 missioner as provided therein, the tax commissioner shall be
6 authorized to distrain immediately therefor, or collect the
7 amount thereof in any appropriate legal proceeding instituted
8 in the circuit court of the county wherein the seat of govern-
9 ment is located, and in addition the state shall have a lien on
10 all the property of such manufacturer or brewer or distributor
11 for the full amount of the unpaid tax; and in addition the tax
12 commissioner may revoke the license of any such manufacturer
13 or brewer or distributor so failing to pay any such tax.

Sec. 97. Every manufacturer or brewer and distributor
2 shall maintain and keep and preserve for a period of two years
3 such record or records of nonintoxicating beer manufactured,

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4 sold or distributed in this state, together with such invoices,
5 records, receipts, bills of lading and other pertinent papers
6 as may be required by the tax commissioner, and the tax com-
7 missioner shall have authority by himself or through his duly
8 designated agent to inspect the books, accounts, records and
9 memoranda of any manufacturer or brewer and distributor
10 licensed under the provisions of this act, and to examine under
11 oath any officer, agent or employe of any manufacturer or
12 brewer and distributor. The tax commissioner may require the
13 production, within this state at such time and place as he may
14 designate, of any books, accounts, papers or records kept within
15 or without the state, or verified copies in lieu thereof, in order
16 that an examination thereof may be made by the tax commis-
17 sioner or his duly designated agents. If as the result of such
18 examination it shall be found that any nonintoxicating beer
19 subject to the payment of a license tax, has been manufactured
20 or brewed, sold or distributed, by any manufacturer or brewer
21 or distributor, upon which the tax has not been paid, the tax
22 commissioner shall make an assessment of the amount of the
23 tax so found to be due, and in addition thereto and as a part
24 thereof shall assess a penalty of fifty per cent of the amount

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25 of such tax and shall notify such manufacturer or brewer or
26 distributor of the additional amount due. If the same remains
27 unpaid for a period of thirty days the tax commissioner shall
28 have authority to revoke any license held at the time by the
29 licensee and in addition thereto to collect the amount found
30 to be due by any appropriate legal proceedings in the circuit
31 court of the county in which the seat of government is located,
32 unless an appeal is taken from the action of the tax commis-
33 sioner as hereinafter provided.

34 Within thirty days after the receipt of any additional amount
35 claimed to be due by any brewer or manufacturer or distribu-
36 tor, as shown by an examination by the tax commissioner, the
37 licensee shall have the right to an appeal from his findings to
38 the circuit court of the county in which the seat of government
39 is located and such appeal shall be heard by the said circuit
40 court de novo. Whether the finding of the tax commissioner
41 is affirmed or reversed the circuit court shall enter an order
42 accordingly and either party shall then have the right of appeal
43 to the supreme court of appeals of the state.

Sec. 98. A license shall be issued by the authorities so em-
2 powered in this act to any person, firm, association, partnership

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3 or corporation who, applies for a dispenser's license and who
4 submits a written application for a license, which application
5 shall state under oath:

5-a As to individuals:

5-b (a) That he has been a resident of the state for five years or
6 more and the name, and residence address of the applicant, and
7 the length of time he has lived at such residence;

8 (b) That he is a citizen of the United States;

9 (c) The place of birth of the applicant, and if the appli-
10 cant is a naturalized citizen, the time and place of such naturali-
11 zation;

12 (d) That the applicant has never been convicted of felony;

12-a As to all applicants:

13 (a) The location of the place or building where the applicant
14 intends to operate;

15 (b) The name of the owner of the building and if such owner
16 is not the applicant, that such applicant is the actual lessee of
17 the premises;

18 (c) That the place or building where he intends to operate
19 reasonably conforms to all laws and health and fire regulations,
20 applicable thereto, and is a safe and proper place or building;



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Sec. 99. The tax commissioner may revoke the license of any licensee, subject to an appeal of any licensee to a court of competent jurisdiction whenever any licensee is aggrieved:

(1) When disorderly or immoral practices are permitted or intoxicating liquor is sold on the premises;

(2) Where the word "saloon" is printed, painted or placed upon the door, window or in any other public place on or about the premises or when the word "saloon" is used in any advertisement by the licensee;

(3) When circumstances happen or become known to the properly empowered authorities under this act which, had they happened or been known at the time of the application for the license would have legally justified such authorities in refusing the license.

Any person who violates any provisions of this act or who makes a false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation thereof, shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars or imprison-

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21 ment in the county jail for not less than thirty days or more
22 than six months, or by both such fine and imprisonment.

23 Any person, other than parent or guardian, firm, association,
24 partnership or corporation holding a license under this act who
25 shall sell or give any nonintoxicating beer to any person under
26 the age of sixteen years, knowing, or having reason to believe
27 that such person is under the age of sixteen years, shall be guilty
28 of a misdemeanor, and upon conviction thereof shall be fined
29 by the court not less than twenty-five, nor more than one hun-
30 dred dollars.

31 Cities and incorporated towns are hereby specifically em-
32 powered to enact ordinances for the enforcement of this act,
33 in conformity with the provisions of this act.

Sec. 100. Municipal corporations in this state shall have
2 authority to levy a tax under the provisions of this act upon any
3 package dealer, dispenser, manufacturer or brewer and dis-
4 tributor of nonintoxicating beer; but the amount of the tax
5 levied by such municipal corporation shall in no event exceed
6 one-half the amount fixed herein to be levied by the state.

Sec. 101. All taxes collected under the provisions of this act
2 shall be paid to the treasurer of the state in the manner now pro-

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Sec. 102. The sections of this act and every part of such
2 sections are hereby declared to be independent sections and
3 parts of sections, and the holding of any section or any part
4 thereof to be void or ineffective shall not affect any other sec-
5 tion or part of section.

6 Chapter twenty-four, acts of the legislature, regular session,
7 one thousand nine hundred thirty-three, being house bill number
8 three hundred fifty-nine of that session, all acts and parts of acts
9 regulating or prohibiting advertising of nonintoxicating beer
10 in any and all publications in this state, and all other acts and
11 parts of acts, general or special, coming within the purview of
12 this act and inconsistent therewith are hereby repealed.

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Ray W. Garvin
Chairman Senate Committee.

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

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

H. M. ...
President of the Senate.

Anna ...
Clerk of the Senate.

James L. Smith
Chairman House Committee.

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

this... *13*... day of... *April*..., 1933.

H. S. ...
Governor

Filed in the office of the Secretary of State
of West Virginia. **APR 13 1933**
Wm. S. O'BRIEN,
Secretary of State