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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1935



ENROLLED

HOUSE BILL No. 177

(By Mr. La Hou)



PASSED February 28 1935

In Effect March 1, 1935 Passage

177

ENROLLED
House Bill No. 177

(BY MR. LAFON, by request)

[Passed February 28, 1935; in effect March 1, 1935.]

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 the code by enacting and adding thereto thirteen additional sections to be numbered ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one, one hundred two and one hundred three to provide for the raising of additional public revenue by a license tax on the business of selling non-intoxicating beer, to define non-intoxicating beer, to classify sales thereof, and to provide for the collection of such tax, and to repeal chapter twenty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and

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 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-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one, one hundred two and one hundred three, 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
5 kind; 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

10 public show, to which admission is obtained for money or re-
11 ward, except for the benefit or under the auspices of a vol-
12 unteer fire department; 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
15 use or resort, a shooting gallery, a skating rink; or run, or
16 operate a cane rack, doll baby rack, knife rack, striking ma-
17 chine, jingle board, punch board, artful dodger, candy wheel,
18 or other scheme or device by which merchandise or other
19 things of value are disposed of by game of chance, or like de-
20 vice, or human laundry device, or dip device; or

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

24 (g) Act as an auctioneer; or

25 (h) Practice the business of real estate agent, stockbroker,
26 or other broker, by buying or selling for others, stocks, se-
27 curities, or any other property for a commission or reward; or

28 (i) Practice the business of money broker, buying or sell-
29 ing undecurrent or depreciated money or funds; or ex-

30 changing one kind of money or funds for another, for bene-
31 fit or reward; or

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

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

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

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

48 (n) Sell, offer or expose for sale, or solicit, or receive or-
49 ders for manufactured tobacco, snuff, cigars, cigarettes, or

50 other preparations of tobacco, or cigarette paper or wrapper,

51 at wholesale or retail ; or

52 (o) Carry on the business of junk dealer, or act as agent, so-

53 licitor, canvasser, or salesman, for any junk dealer ; or

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

55 (q) Maintain or occupy any house boat, or like structure or

56 vessel, upon or along the bed, banks or shores of any navigable

57 stream ; or

58 (r) Maintain any slot machine, or other automatic device,

59 which, for the same profit or reward, in each case and with-

60 out any violation of the law, furnishes music, or exhibits pic-

61 tures, or provides facilities for weighing, or supplies any

62 merchandise or other thing or renders any service ; but no slot

63 machine or other automatic device with respect to which, or its

64 operation, service, or supplies, there is any element of chance

65 (being a gaming table, within the meaning of section one,

66 article ten, chapter sixty-one of this code), shall be protected

67 by any license ; or

68 (s) Being a corporation, heretofore or hereafter chartered

69 under the laws of this state, whether its principal place of

70 business or chief works be within or without the state, do,

71 or attempt to do, any business by virtue of its charter or cer-
72 tificate of incorporation; or

73 (t) Being a corporation chartered or organized under the
74 laws of any other state or country, hold property or transact
75 business in this state; or being a corporation, hold more than
76 ten thousand acres of land in this state; or

77 (u) Solicit, carry on or practice the business of a collection
78 agency, or association, whether it be a person, firm or corpor-
79 ation; or

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

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

83 (x) Manufacture, sell or distribute, either at retail or
84 wholesale, any and all preparations of every kind, character
85 or nature, such as are prepared, mixed and sold at soda foun-
86 tain, and all such preparations as bevo, pablo, milo, moxie, gin-
87 ger ale, near beer, coca cola, pop, and all other preparations of
88 like nature and character commonly known as soft drinks; or

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

91 (z) Manufacture, sell or distribute, either at retail or

92 wholesale, cereal malt beverage or products of the brewing
93 industry, as defined in section ninety-one of this act.

94 Nothing in this article contained, and no license or payment
95 under the provisions hereof, shall be taken to legalize any
96 act which otherwise may be in violation of law, or exempt any
97 person from any penalty prescribed for such violation.

Sec. 91. the words "non-intoxicating beer", as used in
2 this act shall be construed to embrace all cereal malt bever-
3 ages or products of the brewing industry, which same are com-
4 monly referred to as beer, lager beer, ale and all other mix-
5 tures and preparations produced by the brewing industry, and
6 containing not more than five per cent of alcohol by weight,
7 which are hereby declared to be non-intoxicating; and the
8 word "liquor" as used in chapter sixty of the code of West
9 Virginia shall not be construed to include or embrace any
10 cereal malt beverage or product of the brewing industry or any
11 other mixtures or preparations of like nature containing not
12 more than five per cent of alcohol by weight.

Sec. 92. The word "retailer" as used in this act, shall
2 mean and include any person, firm, association, partnership or
3 corporation selling, serving, delivering or otherwise dispensing

4 non-intoxicating beer, whether in glass bottles or on draft,
5 at his, its or their established and licensed place of busi-
6 ness.

7 The words “manufacturer or brewer” as used in this act,
8 shall mean and include any person, firm, association, partner-
9 ship or corporation manufacturing non-intoxicating beer for
10 sale at wholesale; and provided further, that no manufacturer
11 or brewer whose chief place of business is without the State
12 of West Virginia, shall offer his or their products for sale
13 in the State of West Virginia except through a duly licensed
14 wholesaler or distributor operating under the provisions of
15 this act, and no manufacturer or brewer whose chief place of
16 business is without the State of West Virginia, shall be con-
17 nected either directly or indirectly with a wholesaler or dis-
18 tributor.

19 The word “distributor” as used in this act, shall mean and
20 include any person, firm, association, partnership, corporation,
21 manufacturer or brewer, whose chief place of business is with-
22 in the State of West Virginia, jobbing or distributing non-
23 intoxicating beer to a retailer at wholesale. *Provided however,*
24 That a wholesaler or distributor may sell to a consumer, for

25 personal use and not for resale, draught beer in quantities of
26 one-eighth, one quarter and one-half barrels in the original
27 container.

Sec. 93. There is hereby levied and imposed upon retail
2 dealers as herein defined an annual license tax of one hundred
3 dollars per year. There is hereby levied and imposed upon
4 manufacturers or brewers, as herein defined, manufacturing
5 non-intoxicating beer, as defined in section ninety-one of this
6 act, within this state an initial license tax of five hundred dol-
7 lars per year, and whether such non-intoxicating beer be kept
8 or sold in barrels or other containers, an additional tax of one
9 dollar on each barrel of thirty-one gallons, and in like ratio on
10 each part barrel so manufactured in this state for sale within
11 this state. There is hereby levied and imposed upon distribu-
12 tors, as herein defined, an initial license tax of two hundred
13 fifty dollars per year, and an additional tax of one dollar on
14 each barrel, and in like ratio on each part barrel of non-intoxi-
15 cating beer whether distributed in barrels or other containers,
16 so distributed in this state: *Provided, however,* That the barrel
17 tax herein levied shall, as to non-intoxicating beer made in
18 West Virginia, be paid by the manufacturer or brewer, and

19 the barrel tax on non-intoxicating beer made outside of West
20 Virginia shall be paid by the original consignee thereof with-
21 in this state, who shall be deemed the distributor for the pur-
22 poses of this act, and required to take out a license as such,
23 and the issuance of such distributor's license shall operate as a
24 forfeiture of any retail dealer's license held by him; and no
25 non-intoxicating beer manufactured, sold or distributed in
26 West Virginia shall be subject to more than one barrel tax.

27 Each such retail dealer, manufacturer or brewer and dis-
28 tributor being engaged in the business of selling, delivering
29 or otherwise distributing non-intoxicating beer, and having
30 more than one place of business within the State of West
31 Virginia, shall pay the full amount of the initial tax hereby
32 imposed for each such place of business: *Provided, further,*
33 That any social, fraternal or business clubs not operating for
34 profit, and having been in continuous operation for five years
35 or more prior to the enactment of this law, shall pay an annual
36 license tax of fifty dollars, as retailers hereunder; *And pro-*
37 *vided further,* That railroads operating in this state may dis-
38 pense non-intoxicating beer upon payment of an annual license

39 tax of ten dollars for each dining, club or buffet car in which
40 it is dispensed.

Sec. 94. It shall be unlawful for any manufacturer or
2 brewer, wholesaler or distributor, to furnish, give, rent or
3 sell any equipment, fixtures, or supplies, directly or indirectly,
4 or through a subsidiary or affiliate, or by any officer, director,
5 or firm member of the industry, to any person engaged in sell-
6 ing products of the brewing industry for consumption on the
7 premises where sold or to offer any prize, premium, gift, or
8 other similar inducement, except advertising novelties of nomi-
9 nal value, to either trade or consumer buyers.

10 No person, firm or corporation having an interest in the man-
11 ufacture or wholesale distribution of non-intoxicating beer
12 shall be permitted, either directly or indirectly, to be connected
13 with, or have an interest in the sale or dispensing of non-in-
14 toxicating beer under a retail license.

Sec. 95. Licenses for the sale of non-intoxicating beer shall
2 be for the term of one year commencing on the first day of
3 July of each year and ending on the thirtieth day of June
4 of the following year. If granted for a less period than one
5 year the initial state tax thereon shall be computed quarterly

6 from the annual tax in proportion to such time as the license
7 has to run.

Sec. 96. All licenses under this act for manufacturers,
2 brewers, distributors and retail dealers shall be issued by the
3 tax commissioner upon the filing of the application herein
4 required except that such tax commissioner shall not be re-
5 quired to renew the licenses of any such manufacturer, brewer
6 distributor or retail dealer who shall have failed and refused
7 to comply with any of the provisions of this act, or any law-
8 ful regulation of the tax commissioner with relation to such
9 business, during the time when any such applicant shall have
10 operated under any license theretofore issued to him.

11 Every such retail dealer, on or before the first day of July
12 of any year, shall make out and deliver to the state tax com-
13 missioner, on the blank to be furnished by the commissioner
14 for that purpose, a statement showing the name of such retail
15 dealer, a brief and accurate description of the place or places
16 where his business as such retail dealer is conducted and by
17 whom owned. Such statement shall be signed and sworn to
18 before a notary public or other officer empowered to administer
19 oath.

20 Every manufacturer, brewer and distributor applying for
21 license under this act shall, in addition to furnishing the in-
22 formation required in the last preceding section, furnish a
23 bond in some solvent surety company to be approved by the
24 tax commissioner, payable to the State of West Virginia, in
25 the minimum amount of one thousand dollars, and, within the
26 discretion of the tax commissioner, in the maximum amount of
27 ten thousand dollars, conditioned for the payment of any and
28 all additional taxes accruing during the period of such license.

29 On or before the tenth day of each calendar month during
30 the license period, every manufacturer, brewer or distributor
31 shall make a report in writing under oath to the tax commis-
32 sioner, in such form as may be required by the tax commis-
33 sioner, showing the number of barrels of non-intoxicating
34 beer manufactured or distributed by such manufacturer,
35 brewer or distributor for the preceding calendar month, or
36 part thereof during which such manufacturer, brewer or dis-
37 tributor was engaged in business and at the same time pay the
38 tax thereon levied by this act. Within thirty days after the
39 end of any license tax year each manufacturer or brewer and
40 distributor shall make report in writing, under oath, to the tax

41 commissioner, in such form as may be required by him, show-
42 ing the number of barrels of non-intoxicating beer manufac-
43 tured or distributed by such manufacturer or brewer or dis-
44 tributor for the preceding license tax year, or part thereof,
45 during which such manufacturer or brewer or distributor was
46 engaged in business.

Sec. 97. If any manufacturer or brewer or distributor
2 whose report to the tax commissioner provided for in the next
3 preceding section hereof shows him, it or them to be liable
4 for any unpaid license taxes shall fail to pay the same to the
5 tax commissioner as provided therein, the tax commissioner
6 shall be authorized to distrain immediately therefor, or col-
7 lect the amount thereof in any appropriate legal proceeding
8 instituted in the circuit court of the county wherein the seat
9 of government is located, and in addition the state shall have
10 a lien on all the property of such manufacturer or brewer or
11 distributor for the full amount of the unpaid tax; and in ad-
12 dition the tax commissioner may revoke the license of any such
13 manufacturer or brewer or distributor so failing to pay any
14 such tax.

Sec. 98. Every manufacturer or brewer and distributor

2 shall maintain and keep and preserve for a period of two
3 years such record or records of non-intoxicating beer
4 manufactured, sold or distributed in this state, together with
5 such invoices, records, receipts, bills of lading and other per-
6 tinent papers as may be required by the tax commissioner, and
7 the tax commissioner shall have authority by himself or
8 through his duly designated agent to inspect the books, ac-
9 counts, records and memoranda of any manufacturer or brewer
10 distributor licensed under the provisions of this act, and to ex-
11 amine under oath any officer, agent or employee of any manu-
12 facturer or brewer and distributor. The tax commissioner
13 may require the production, within this state at such time and
14 place as he may designate, of any books, accounts, papers or
15 records kept within or without the state, or verified copies in
16 lieu thereof, in order that an examination thereof may be made
17 by the tax commissioner or his duly designated agents. If as the
18 result of such examination it shall be found that any non-intoxi-
19 cating beer subject to the payment of a license tax, has been
20 manufactured or brewed, sold or distributed, by any manufac-
21 turer or brewer or distributor, upon which the tax has not been
22 paid, the tax commissioner shall make an assessment of the

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

34 Within thirty days after the receipt of notice of any addi-
35 tional amount claimed to be due by any brewer or manufac-
36 turer or distributor as shown by an examination by the tax
37 commissioner, the licensee shall have the right to an appeal
38 from his findings to the circuit court of the county in which
39 the seat of government is located and such appeal shall be
40 heard by the said circuit court de novo. Whether the find-
41 ing of the tax commissioner is affirmed or reversed the cir-
42 cuit court shall enter an order accordingly and either party

43 shall then have the right of appeal to the supreme court of
44 appeals of the state.

Sec. 99. A license shall be issued by the authorities so em-
2 powered in this act to any person, firm, association, partnership
3 or corporation, who applies for a retail license and who submits
4 a written application for a license, which application shall state
5 under oath:

6 As to individuals:

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

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

11 (c) The place of birth of the applicant, and if the applicant
12 is a naturalized citizen, the time and place of such naturaliza-
13 tion;

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

15 As to all applicants:

16 (a) The location of the place or building where the appli-
17 cant intends to operate;

18 (b) The name of the owner of the building and if such

19 owner is not the applicant, that such applicant is the actual
20 lessee of the premises;

21 (c) That the place or building where he intends to oper-
22 ate reasonably conforms to all laws and health and fire regula-
23 tions, applicable thereto, and is a safe and proper place or
24 building;

Sec. 100. The state tax commissioner shall have the power
2 and authority to adopt and promulgate, repeal, rescind and
3 amend, in the manner herein required, rules, regulations, stan-
4 dards, requirements and orders necessary to carry out the pro-
5 visions of this act including the following:

6 (a) Rules and regulations with reference to permits; and
7 issuance of the same.

8 (b) Rules and regulations determining the nature and form
9 of all packages and bottles to be used as containers for cereal
10 malt beverages or products of the brewing industry to be kept or
11 sold under this act.

12 (c) Rules and regulations pertaining to the branding or label-
13 ing of packages or containers used in the sale of cereal malt bev-
14 erages or products of the brewing industry.

✓ 15 (d) Rules and regulations governing the placing of all ex-

16 terior advertising with reference to the sale of cereal malt bev-
17 erages or products of the brewing idustry, upon premises where
18 permits have been granted for the sale of the same at retail.

19 And provided further, the tax commissioner may revoke
20 the license of any licensee, subject to an appeal of any licensee
21 to a court of competent jurisdiction whenever any licensee is
22 aggrieved:

23 (1) When disorderly or immoral practices or other viola-
24 tions of the law are permitted or intoxicating liquor is possessed
25 or sold unlawfully on the premises;

26 (2) Where the word "saloon" is printed, painted or placed
27 upon the door, window or in any other public place on or about
28 the premises or when the word "saloon" is used in any adver-
29 tisement by the licensee;

30 When circumstances happen or become known to the properly
31 empowered authorities under this act, which had they happened
32 or been known at the time of the application for the license
33 would have legally justified such authorities in refusing the
34 license;

35 (4) Where any retail dealer shall sell or dispense non-intoxi-
36 cating beer purchased from any other person other than a li-

37 censed distributor under the laws of this state, without having
38 first paid the barrel tax therefor herein imposed.

39 (5) When such licensee shall violate any of the provisions of
40 of this act or any lawful rule or regulation promulgated by the
41 tax commissioner under authority of this act.

42 Any person who violates any provisions of this act or who
43 makes a false statement concerning any material fact in submit-
44 ting an application for a license or for a renewal of a license or
45 in any hearing concerning the revocation thereof, shall be pun-
46 ished for each offense by a fine of not less than twenty-five dol-
47 lars nor more than five hundred dollars or imprisonment in the
48 county jail for not less than thirty days or more than six months
49 or both such fine and imprisonment.

50 Any person (other than parent or guardian) firm, associa-
51 tion, partnership or corporation holding a license under this
52 act who shall sell or give any non-intoxicating beer to any per-
53 son under the age of eighteen years, knowing, or having reason
54 to believe, that such person is under the age of eighteen years,
55 shall be guilty of a misdemeanor, and upon conviction thereof
56 shall be fined by the court not less than twenty-five nor more
57 than one hundred dollars.

58 Cities and incorporated towns are hereby specifically em-
59 powered to enact ordinances for the enforcement of this act
60 in conformity with the provisions of this act.

Sec. 101. Municipal corporations in this state shall have au-
2 thority to levy a license tax under the provisions of this act
3 upon any retail dealer, manufacturer or brewer and distrib-
4 utor of non-intoxicating beer; but the amount of the license
5 tax levied by such municipal corporation shall in no event
6 exceed one-half the amount fixed herein to be levied by the
7 state as an annual license tax upon retail dealers and an initial
8 license tax per year upon manufacturers and brewers and dis-
9 tributors.

Sec. 102. All taxes imposed and collected under the provi-
2 sions of this act from non-intoxicating beer shall be paid to the
3 treasurer of the state in the manner now provided by law, and
4 credited to the state fund, general revenue.

Sec. 103. The sections of this act and every part of such
2 sections are hereby declared to be independent sections and parts
3 of sections, and the holding of any section or any part thereof to
4 be void or ineffective shall not affect any other section or part of
5 section; *Provided further*, That chapter twenty, acts of the legis-

6 lature, first extraordinary session, one thousand nine hundred
7 thirty-three, being House Bill No. Eight of that session, all
8 other acts and parts of acts, general or special, coming within
9 the purview of this act and inconsistent therewith are hereby
10 repealed.

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

Clinton F. Howard
Chairman Senate Committee

Arnold M. Vickers
Chairman House Committee

Originated in the *House of Delegates*

Takes effect *March 1, 1935* ~~passage~~

Frank Miller
Clerk of the Senate

Pro Hall
Clerk of the House of Delegates

Chas. E. Hoyle
President of the Senate

John S. Selter
Speaker House of Delegates.

The within *is approved* this the *first*
day of *March*, 1935.

H. S. Kump
Governor

Filed in the office of the Secretary of State
of West Virginia. *MAR 2 - 1935*
John S. O'Brien
Secretary of State