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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935

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ENROLLED

HOUSE BILL No. 119

(By Mr. Pelster)

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PASSED February 22 1935

In Effect

March 1, 1935  
Passage

## ENROLLED

# House Bill No. 119

(By MR. SPEAKER, MR. PELTER, by request)

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[Passed February 22, 1935; in effect March 1, 1935.]

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AN ACT repealing chapter sixty, as amended, of the code of West Virginia, one thousand nine hundred thirty-one, and enacting in lieu thereof a new chapter sixty providing for state control of alcoholic liquors, and repealing all acts or parts of acts inconsistent herewith.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixty, as amended, of the code of West Virginia, one thousand nine hundred thirty-one, is hereby repealed; and a new chapter sixty providing for the state control of alcoholic liquors is hereby enacted to read as follows:

### ARTICLE I.

Section 1. The purpose of this chapter is to give effect to the

2 mandate of the people expressed in the repeal of the state pro-  
3 hibition amendment; and to assure the greatest degree of  
4 personal freedom that is consistent with the health, safety and  
5 good morals of the people of the state. To these ends the police  
6 power of the state is pledged to the sound control and the  
7 temperate use of alcoholic liquors.

Sec. 2. A person shall not sell, possess for sale, transport, or  
2 distribute alcoholic liquors in this state except in accordance  
3 with the provisions of this chapter.

Sec. 3. Subject to the provisions of this chapter, alcoholic  
2 liquors, in this state:

3 (1) Shall be sold only in sealed packages.

4 (2) Shall not be sold for consumption on the premises where  
5 sold.

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

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

Sec. 4. Alcoholic liquors shall be sold at wholesale and retail  
2 in this state only or through the West Virginia Liquor Con-  
3 trol Commission, or its retail agencies.

Sec. 5. For the purposes of this chapter :

2    “Alcohol” shall mean ethyl alcohol whatever its origin, and  
3 shall include synthetic ethyl alcohol but not denatured alcohol.

4    “Beer” shall mean any beverage obtained by the fermenta-  
5 tion of barley, malt, hops or any other similar product or sub-  
6 stitute, and containing more than five per cent of alcohol by  
7 weight.

8    “Non-intoxicating beer” shall mean any beverage obtained  
9 by the fermentation of barley, malt, hops, or similar product  
10 or substitute, and containing not more than five per cent of  
11 alcohol by weight.

12    “Wine” shall mean any alcoholic beverage obtained by the  
13 fermentation of the natural content of fruits, or other agri-  
14 cultural products, containing sugar.

15    “Spirits” shall mean any alcoholic beverage obtained by  
16 distillation and mixed with potable water and other substances  
17 in solution, and includes brandy, rum, whiskey, cordials and  
18 gin.

19    “Alcoholic liquor” shall include alcohol, beer, wine and  
20 spirits, and any liquid or solid containing more than five per

21 cent of alcohol by weight and capable of being used as a bev-  
21-a erage.

22 “Original package” shall mean any closed or sealed con-  
23-29 tainer or receptacle used for holding alcoholic liquor.

30 “Sale” shall mean any transfer, exchange, or barter in any  
31 manner or by any means, for a consideration, and shall include  
32 all sales made by principal, proprietor, agent or employee.

33 “Selling” shall include solicitation or receipt of orders; pos-  
34 session for sale; and possession with intent to sell.

35 “Person” shall mean an individual, firm, partnership, cor-  
36 poration or voluntary association.

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

40 “Manufacturer” shall mean any person engaged in the manu-  
41 facture of any alcoholic liquor, and among others includes a  
42 distiller, a rectifier, a wine maker, and a brewer.

43 “Brewery” shall mean an establishment where beer is manu-  
44 factured or in any way prepared.

45 “Winery” shall mean an establishment where wine is manu-  
46 factured or in any way prepared.

47    “Distillery” shall mean an establishment where alcoholic  
48 liquor other than wine or beer is manufactured or in any way  
49 prepared.

50    “Public place” shall mean any place, building or convey-  
51 ance to which the public has, or is permitted to have access,  
52 including restaurants, soda fountains, and hotel dining rooms  
53 and lobbies, and corridors of hotels, and any highway, street,  
54 lane, park or place of public resort or amusement.

55    “State Liquor Store” shall mean a store established and op-  
56 erated by the commission under this chapter for the sale of  
57 alcoholic liquor in the original package for consumption off  
58 the premises.

59    “An agency” shall mean a drug store, grocery store or gen-  
60 eral store designated by the commission as a retail distributor  
61 of alcoholic liquor for the West Virginia Liquor Control Com-  
62 mission.

63    “Department” shall mean the organization through which  
64 the commission exercises powers imposed upon it by this  
65 chapter.

66    “Commission” shall mean the West Virginia Liquor Control  
67 Commission.

Sec. 6. This chapter may be cited as the “Liquor Control  
2 Act”.

Sec. 7. The provisions of this act do not apply to non-  
2 intoxicating beer except as is otherwise specifically provided.

## **ARTICLE II.**

Section 1. To accomplish the purposes of this chapter there  
2 is hereby created the “West Virginia Liquor Control Commis-  
3 sion,” which shall be a corporation, and, as such, may sue and  
4 be sued, contract and be contracted with, and it shall have a  
5 common seal.

Sec. 2. The commission shall consist of three members to be  
2 appointed by the governor, with the advice and consent of the  
3 senate. The commissioners shall devote their entire time to the  
4 duties of the office.

Sec. 3. The term of office of members of the commission shall  
2 be four years, except the governor, upon the adoption of this  
3 act, shall appoint the members of the commission upon the fol-  
4 lowing basis: One member for a term of two years, one member  
5 for a term of three years, and one member for a term of four  
6 years. As these appointments expire, subsequent appointments  
7 shall be made for four-year terms.

8 Any appointment to fill a vacancy shall be for the unexpired  
9 term.

Sec. 4. The members of the commission shall be selected with  
2 special reference to their ability and fitness to perform the  
3 duties required of them by this chapter.

4 Not more than two of the commission shall be members of the  
5 same political party.

Sec. 5. A member of the commission shall not be a candidate  
2 for or hold any public office other than that of member of the  
3 commission; nor shall he be a member of any committee of a  
4 political party. In case a member becomes a candidate for or is  
5 appointed to any public office or political committee, his office as  
6 member of the commission shall be automatically vacated.

Sec. 6. A member of the commission shall have no personal  
2 interest in or derive any gain from an enterprise or industry  
3 engaged in the manufacture, sale or use of alcoholic liquor.

Sec. 7. Before entering upon their duties, members of the  
2 commission shall each take and subscribe to the oath prescribed  
3 by section five, article four of the constitution of this state, and  
4 shall give bond in the penalty of twenty-five thousand dollars,  
5 to be approved by the governor and conditioned upon the faith-



6 ful performance of his duties and the accounting for and pay-  
7 ment into the treasury of all moneys coming into his custody  
8 by virtue of his office. The bond and oath shall be filed with  
9 the secretary of state.

Sec. 8. The governor shall designate one member of the com-  
2 mission as the chairman, who shall be the presiding officer, and  
3 the members shall choose one of their own members secretary.  
4 A majority of the members shall constitute a quorum for the  
5 conduct of official business.

Sec. 9. Each member of the commission shall receive a  
2 salary of six thousand dollars per annum and his actual and  
3 necessary traveling expenses incurred in the performance of  
4 his duties.

Sec. 10. The offices of the commission shall be maintained at  
2 the state capitol and shall be the regular place of meeting of  
3 the commission.

Sec. 11. The state liquor commission shall have the fol-  
2 lowing powers and duties and any and all other powers and  
3 duties reasonably necessary and convenient for the purposes  
4 of this act:

- 5     (1)   Exercise general supervision of, and make rules and  
6 regulations for the management of its department;
- 7     (2)   Sign and execute in the name of the commission any  
8 contract or agreement authorized by this chapter;
- 9     (3)   Supervise the fiscal affairs and responsibilities of the  
10 department;
- 11    (4)   Obtain by lease or agreement, after receiving competi-  
12 tive bids, lands and buildings required for the purposes of this  
13 chapter; but nothing herein contained shall empower the com-  
14 mission to acquire title to any real estate except as provided  
15 by section twenty-three of article four. But all such leases  
16 and/or agreements shall contain a condition whereby such  
17 leases or agreements shall terminate and all liability to the com-  
18 mission thereunder shall cease and determine, should the sale  
19 of alcoholic liquors be prohibited under the provisions of article  
20 five of this chapter.
- 21    (5)   Keep a complete and accurate record of all proceedings.  
22 record and file all bonds and contracts taken or entered into,  
23 and assume responsibility for the custody and preservation of  
24 all papers and documents pertaining to the commission;

25 (6) Purchase or lease as provided by law all equipment  
26 necessary for the conduct of the department;

27 (7) Report to the governor each year all information rela-  
28 tive to the operation and functions of the department. They  
29 shall make such other reports and recommendations as may be  
30 required by the governor;

31 (8) Exercise any other power that may be necessary or  
32 proper for the orderly conduct of the business and the effective  
33 discharge of the duties of the commission;

34 (9) Invoke any legal or equitable remedies for the en-  
35 forcement of the orders of the commission or the provisions of  
36 this chapter;

37 (10) All writings required to be executed on behalf of the  
38 commission shall be signed by the chairman and attested by the  
39 secretary, except that in the absence of the chairman such writ-  
40 ings may be executed by the other two members.

Sec. 12. The commission shall appoint or employ such as-  
2 sistants and employees as may be necessary to the efficient oper-  
3 ation of the department and fix their salaries. All assistants  
4 and employees shall be appointed or employed to serve during  
5 the will and pleasure of the commission.

Sec. 13. The commission shall require every employee who  
2 collects fees or handles funds or who has custody of equipment  
3 and supplies belonging to the state to take the oath prescribed  
4 by section five, article four of the state constitution and give  
5 an official bond. The bond shall be properly conditioned upon  
6 the faithful performance of the employee's duties and the ac-  
7 counting for and payment into the state treasury as required  
8 by this chapter of all moneys coming into his custody by virtue  
9 of this chapter, and signed by sufficient sureties in a sum to be  
10 fixed by the commission, which bond shall be approved by the  
11 commission and filed in the office of the secretary of state.

Sec. 14. The commission shall have the authority to grant  
2 and revoke licenses as provided in article five of this chapter.

Sec. 15. The commission shall prescribe regulations gov-  
2 erning the advertising of alcoholic liquors in this state. The  
3 regulations shall prohibit advertising that encourages intem-  
4 perance, induces minors to purchase, or tends to deceive or mis-  
5 represent.

Sec. 16. The commission shall have the power to prescribe  
2 rules and regulations to give effect to the powers vested in it  
3 by this chapter. Rules and regulations shall be recorded in a

4 book especially kept for that purpose, and in its discretion may  
5 be published for general circulation. All other records and  
6 entries necessary to show the official conduct of the commission  
7 shall be preserved and shall be public records and open for in-  
8 spection during business hours.

Sec. 17. All powers and duties vested in the commission, ex-  
2 cept the power to sign contracts, may be exercised by the ap-  
3 pointees or employees of the commission under its direction;  
4 but the commission shall be responsible for their acts.

Sec. 18. In all hearings and proceedings before the com-  
2 mission, the evidence of witnesses and the production of docu-  
3 mentary evidence may be required. Summons may be issued by  
4 it for appearance at any designated place of hearing. In case  
5 of disobedience to a summons or other process, the commission  
6 or any party to the proceedings before the commission may in-  
7 voke the aid of any circuit court in requiring the evidence and  
8 testimony of witnesses and the production of papers, books and  
9 documents. Upon proper showing, the court shall issue an  
10 order requiring witnesses to appear before the commission,  
11 produce all books and papers, and give evidence touching the  
12 matter in question. Any person failing to obey the order may

13 be punished by the court as for contempt. A claim that evi-  
14 dence may tend to incriminate the person giving the evidence  
15 shall not excuse him from testifying, but he shall not be prose-  
16 cuted for any offense concerning which he is compelled to  
17 testify.

Sec. 19. The attorney general and the prosecuting attorneys  
2 of the several counties shall render to the commission, without  
3 additional compensation, such legal services as it may require  
4 of them in the discharge of its duties under the provisions of  
5 this chapter.

Sec. 20. The members of the commission shall not be civilly  
2 responsible for any act done or omitted in good faith in the  
3 discharge of duties imposed upon them by this chapter.

Sec. 21. At the close of each fiscal year, the state tax com-  
2 missioner shall audit the affairs of the West Virginia depart-  
3 ment of liquor control and report the results of the audit to the  
4 governor. The cost of the audit shall be paid from the oper-  
5 ating fund.

### **ARTICLE III.**

Section 1. The sale of alcoholic liquors at wholesale and  
2 retail in this state shall be a state monopoly. Alcoholic liquors

3 shall be sold at retail only through the state stores and the  
4 agencies of the West Virginia Liquor Control Commission.

5 The commission may sell such liquors at wholesale to per-  
6 sons licensed to purchase at wholesale as provided in this  
7 chapter.

Sec. 2. The commission shall establish state stores and  
2 agencies at places throughout the state so as to serve adequately  
3 and reasonably the demand for the sale at retail of alcoholic  
4 liquors, subject only to the limitations imposed by article eight  
5 of this chapter. It may discontinue a store or agency when  
6 in its opinion it is advisable to do so.

7 A store or agency shall not be located in the immediate vicin-  
8 ity of a church or school.

Sec. 3. The commission shall establish and manage as  
2 many warehouses as may be necessary, but not more than  
3 four, for the storage of alcoholic liquors and the supply of  
4 state stores and agencies.

Sec. 4. The commission shall appoint a manager for and  
2 assign employees to each state store. The manager shall be  
3 responsible to the commission for the conduct and operation  
4 of the store.

Sec. 5. The commission shall issue appropriate rules and  
2 regulations to govern the conduct of state stores and agencies.

Sec. 6. A state agency shall procure stocks of alcoholic  
2 liquor for sale at retail only from the commission. Sales at  
3 retail in agencies shall be made in the same manner as sales  
4 in state stores.

Sec. 7. The commission shall classify state agencies into  
2 not more than three groups with respect to volume of business.  
3 An agent shall be compensated in a fixed sum, uniform within  
4 each group, and in an amount to be fixed by the commission,  
5 but not more than one thousand dollars in any one year.  
6 Each agent shall give bond in an amount fixed by the com-  
7 mission conditioned upon the faithful observance of the  
8 provisions of this chapter, compliance with the rules and regu-  
9 lations of the commission, and the accounting for and paying  
10 over of all moneys coming into his custody by virtue of his  
11 agency. An agent shall not, at any time, have on hand a stock  
12 of alcoholic liquors greater in value than the amount of his  
13 bond.

Sec. 8. An agent shall make no profit from the sale of alco-  
2 holic liquors, nor shall he receive compensation for the per-



3 formance of his duties as agent other than that paid him by  
4 the commission.

Sec. 9. The commission shall, from time to time, fix uniform  
2 prices for each variety, class and brand of alcoholic liquors  
3 offered for sale in state stores. Alcoholic liquors shall be sold  
4 in state stores and agencies only at the uniform prices fixed by  
5 the commission.

6 The commission shall prepare price lists showing the price  
7 of each variety, class or brand. Price lists shall be posted  
8 prominently in each store and shall be available for distribu-  
9 tion and inspection in every state store and agency.

Sec. 10. The commission shall install a uniform system of  
2 records and accounts for state stores and agencies. It shall  
3 require a daily report of sales and stock inventory, and shall  
4 audit the accounts and check the stock inventory of each store  
5 and agency at least once in every thirty days.

Sec. 11. The commission shall prescribe a method of stock  
2 or inventory control that will show the amount of each variety,  
3 class and brand of alcoholic liquor on hand in each state store,  
4 agency, and warehouse at any time.

Sec. 12. The commission shall fix the days on which state

2 stores shall be open and the hours of opening and closing, and  
3 the hours during which agencies shall sell alcoholic liquors.  
4 Stores shall not be open nor shall agencies sell alcoholic liquors  
5 on:

- 6 (1) Sundays;
- 7 (2) Legal holidays;
- 8 (3) Any general or special election day.

Sec. 13. A store or agency shall not display any alcoholic  
2 liquor or display or distribute any advertising matter, nor  
3 shall a person employed in a state store or agency advertise,  
4 display or recommend any type, class or brand of alcoholic  
5 liquors, nor shall he discuss or comment upon the relative merits  
6 of any such liquors.

Sec. 14. The commission shall acquire by purchase or lease  
2 equipment, materials, supplies and other property necessary  
3 for the operation of state stores in the manner required for  
4 the purchase or lease of property by other state departments.  
5 This requirement shall not apply to the purchases of alcoholic  
6 liquor for sale or to the leasing of premises for state stores  
7 or warehouses.

8 The commission shall require a sworn statement with the

9 delivery of alcoholic liquors purchased by it that the goods  
10 are as represented, and do not contain any impure or de-  
11 leterious matter. The commission shall by frequent chemical  
12 analysis determine that liquors offered for sale in state stores  
13 and agencies are pure, potable, and not misrepresented.

Sec. 15. In order to avoid the accumulation of excessive  
2 stocks in warehouses and stores, the commission shall so  
3 plan its purchases of alcoholic liquors for sale in state stores  
4 and agencies that the stock on hand at any time does not  
5 exceed the estimated requirements for sixty days' sales.

6 The commission may, with the consent of the governor,  
7 contract for the manufacture of alcoholic liquors for sale in  
8 state stores and agencies. Such liquors shall bear a special  
9 designation as a "state brand".

Sec. 16. Alcoholic liquors shall be sold only in sealed  
2 packages, bearing such seals and labels as the commission  
3 may require.

4 A manufacturer of liquor offered for sale in state stores  
5 and agencies shall attach to each bottle a special label bearing  
6 an accurate description of the contents of the bottle in such  
7 form and detail as the commission may require.

Sec. 17. The commission, with the approval of the governor and the state treasurer, shall prescribe regulations for the handling and depositing of all moneys collected by the commission. All receipts shall be remitted promptly to the state treasury.

Sec. 18. The following funds are created in the state treasury for the purposes of this chapter:

(1) The operating fund, which shall be a revolving fund from which all expenses of operation and administration shall be paid except those authorized to be paid from the reserve fund.

(2) The reserve fund, which shall be a reserve for contingencies and depreciation. This fund may be used for (a) the purchase of equipment and other property having a useful life of more than one year from date of purchase, and (b) transfer to the operating fund to meet unusual requirements arising in the course of business.

Transfers from the reserve fund to the operating fund shall be made as follows: The commission shall recommend such transfer to the governor and the governor shall draw the requisition if he approves the transfer. Moneys in the reserve fund

17 not needed for cash reserve shall, with the approval of the gov-  
18 ernor, be invested by the Board of Public Works in obligations  
19 of the United States, of the State of West Virginia, or any of  
20 its subdivisions.

Sec. 19. All moneys collected by the commission shall be  
2 credited to the operating fund until that fund reaches an  
3 amount sufficient for the current, and routine requirements of  
4 the department, this amount to be fixed by the commission  
5 with the approval of the governor. The receipts in excess of the  
6 requirements of the operating fund shall be paid into the  
7 reserve fund until the amount of the reserve fund equals one  
8 million dollars. Receipts in excess of the requirements of the  
9 operating and reserve funds shall be transferred monthly into  
10 the general fund of the state treasury upon requisition of the  
11 governor.

Sec. 20. The sale of alcoholic liquors in state stores and in  
2 state agencies shall be for cash only.

Sec. 21. Not more than one gallon of alcoholic liquor shall  
2 be sold to a person at one time; but a sale in excess of one  
3 gallon may be made to a person licensed to purchase at whole-

4 sale, and to a religious organization purchasing wine for sac-  
5 ramental purposes.

Sec. 22. Alcoholic liquors shall not be sold to a person who  
2 is:

- 3 (1) Less than twenty-one years of age;
- 4 (2) An habitual drunkard;
- 5 (3) Intoxicated;
- 6 (4) Addicted to the use of narcotic drugs;
- 7 (5) Mentally incompetent.

Sec. 23. A person, while on the premises of a state store or  
2 agency, shall not:

- 3 (1) Break the seal upon any package of alcoholic liquors;
- 4 (2) Consume alcoholic liquor;
- 5 (3) Loiter.

Sec. 24. An appointee or employee of the commission shall  
2 have the authority of a peace officer, to arrest a person for an  
3 act committed on or about the premises of a state warehouse,  
4 state store, or agency, and in his presence, which amounts to:

- 5 (1) A violation of a provision of this chapter;
- 6 (2) Disorderly conduct.

7 The commission shall furnish its appointees and employees  
8 with an official badge as evidence of this authority.

#### **ARTICLE IV.**

Section 1. The commission shall grant and revoke licenses  
2 in accordance with the provisions of this article. Licenses shall  
3 be issued and renewed for the period of the calendar year.

Sec. 2. The commission may grant licenses for the manu-  
2 facture of alcoholic liquors. Separate licenses shall be issued  
3 to the following classes of manufacturing establishments:

4 (1) Distilleries, in which only alcoholic liquors other than  
5 wine or beer shall be manufactured;

6 (2) Wineries, in which only wines shall be manufactured;

7 (3) Breweries, in which beer shall be manufactured;

8 (4) Bottling plants, in which beer only shall be bottled.

9 Licenses for manufacture shall authorize the manufacture  
10 and sale of alcoholic liquors as provided by this chapter.

Sec. 3. A person who is licensed to manufacture alcoholic  
2 liquors in this state may sell such liquors in this state only to the  
3 West Virginia Liquor Control Commission, and to wholesalers  
4 and retailers licensed as provided in this chapter. A manu-

5   facturer may sell alcoholic liquors outside of the state for use or  
6   resale outside of the state.

Sec. 4.   The commission may grant to wholesale druggists  
2   licenses to purchase alcoholic liquors at wholesale from or  
3   through the West Virginia Liquor Control Commission for the  
4   purpose of resale in this state to licensed druggists for com-  
5   pounding and sale at retail in accordance with the provisions  
6   of this chapter. A person holding a license issued under the  
7   authority of this section may sell to druggists outside of this  
8   state for compounding and resale outside of this state.

Sec. 5.   The commission may grant licenses to persons to  
2   purchase alcoholic liquors at wholesale from or through the  
3   West Virginia Liquor Control Commission for industrial, or  
4   scientific uses, or for use in institutions as provided in article  
5   seven, section five of this chapter.

6   The commission may issue special permits authorizing trans-  
7   actions at wholesale for industrial purposes only.

Sec. 6.   The commission may issue licenses to druggists to  
2   sell alcoholic liquors upon prescription as provided in this  
3   chapter.

Sec. 7.   The commission shall license without fee a still



2 used solely for laboratory purposes in an educational institu-  
3 tion and a still used solely for pharmaceutical purposes.

Sec. 8. The commission shall license a still used by a com-  
2 mercial chemist for laboratory purposes only, and not used for  
3 the purpose of the manufacture of alcoholic liquors for resale,  
4 at a fee of five dollars.

Sec. 9. Each separate place of business shall require a  
2 separate license. Licenses shall not be transferable but, with  
3 the approval of the commission in such form and manner as  
4 the commission may prescribe, may be amended to change the  
5 location of the business licensed.

Sec. 10. A person who desires to apply for a license autho-  
2 rized by the provisions of this chapter shall, not more than thirty  
3 nor less than ten days before the filing of formal application,  
4 give notice of his intention. He shall give notice by posting  
5 a statement of his intention in such form as the commissioner  
6 may require at the front door or principal entrance of the place  
7 where the business is to be conducted. He shall also publish  
8 notice, in such form as the commission may require, at least  
9 once in a newspaper published or having a general circulation

10 in the county and municipality in which he intends to do busi-  
11 ness: *Provided, however,* That retail druggists desiring to sell  
12 alcoholic liquors on prescriptions shall not be subject to the  
13 provisions of this section: *Provided further,* That such retail  
14 druggists shall file formal application in writing with the com-  
15 mission and shall pay the license fee.

Sec. 11. Not less than ten days after giving notice of his in-  
2 tention, a person desiring to apply for a license shall file formal  
3 application, in writing, with the commission and shall pay  
4 the license fee.

Sec. 12. Within fifteen days after the filing of formal ap-  
2 plication for a license the commission shall either grant or  
3 refuse the license.

4 If the commission refuses to grant the license it shall re-  
5 fund the license fee.

Sec. 13. The commission shall refuse the license if it finds  
2 that:

3 (1) The applicant is not a suitable person;

4 (2) The place to be occupied by the applicant is not a suit-  
5 able place;

6 (3) A sufficient number of licenses have already been issued.

Sec. 14. A person possessing a license issued under the provisions of this chapter shall pay the fee annually on or before the first day of January of each year. If the license fee is not paid on that day, the license shall be automatically revoked, unless the commission shall, for good cause, grant an extension in writing for not more than ten days.

Sec. 15. A person to whom a license is issued under the provisions of this chapter shall pay, annually, to the commission a license fee as follows, for :

- 4 (1) Distilleries, five hundred dollars;
- 5 (2) Wineries, two hundred and fifty dollars;
- 6 (3) Breweries, two hundred and fifty dollars;
- 7 (4) Bottling plants, one hundred dollars;
- 8 (5) Wholesale druggists, fifty dollars;
- 9 (6) Institutions, ten dollars;
- 10 (7) Industrial use, fifty dollars;
- 11 (8) Retail wine, twenty-five dollars.
- 12 (9) Retail druggists, ten dollars.

Sec. 16. The commission shall prescribe records to be kept by licensees and shall require regular reports at least every thirty days of the amounts and kinds of alcoholic liquors manu-

4 factured, sold, or kept in stock under the authority of a license  
5 issued according to the provisions of this article.

6 Records which the licensee is required to keep shall be open  
7 at all reasonable times to inspection by the commission or its  
8 agents.

Sec. 17. The commission shall have the authority to pre-  
2 scribe such rules and regulations and to require the reporting  
3 of such information by licensees as may be necessary for the  
4 effective administration of the provisions of this chapter.

Sec. 18. A municipal corporation shall not impose a fee or a  
2 special tax as a condition upon the exercise of a license issued  
3 under the provisions of this chapter.

Sec. 19. The commission shall revoke a license issued by  
2 it if it shall find that:

- 3 (1) The licensee is not a suitable person;
- 4 (2) The place occupied by the licensee is not a suitable place;
- 5 (3) The licensee has violated a provision of this chapter or  
6 a regulation made by the commission under the authority of  
7 this chapter;
- 8 (4) The licensee has failed to comply with the spirit and

9 intent of this chapter by encouraging intemperance, the un-  
10 lawful consumption of alcoholic liquors, or otherwise.

Sec. 20. Before revoking a license issued under the authority  
2 of this chapter, the commission shall give at least ten days  
3 notice to the licensee. Notice shall be in writing, shall state the  
4 reason for revocation and shall designate a time and place when  
5 the licensee may show cause why the license should not be re-  
6 voked. Notice shall be sent by registered mail to the address  
7 for which the license was issued. The licensee may, at the time  
8 designated for the hearing, produce evidence in his behalf and  
9 be represented by counsel. On the final revocation of a license  
10 or licenses the commission shall immediately take over the stocks  
11 of liquors possessed by the licensee, and pay to the licensee the  
12 amount paid by him to the state for such stocks less the amount  
13 necessary to defray the costs incurred by the commission in the  
14 revocation proceedings.

Sec. 21. A decision of the commission granting or revoking,  
2 or refusing to grant or to revoke a license authorized by this  
3 chapter shall be subject to judicial review upon the appeal of a  
4 licensee and applicant for a license, a resident of the com-  
5 munity in his own behalf or in behalf of the community, or an

6 interested party who is dissatisfied with the decision of the com-  
7 mission in granting, refusing to grant, revoking or refusing  
8 to revoke a license authorized by this chapter, but in any such  
9 judicial review only the legality of the decision of the commis-  
10 sion under the constitution and laws of this state and the  
11 United States shall be determined.

#### **ARTICLE V.**

Section 1. A county, or any municipality may in an election  
2 held especially for the purpose, determine whether the sale of al-  
3 coholic liquors for beverage purposes shall be permitted within  
4 that county or municipality.

5 A local option election shall not be held within sixty days of  
6 a general or municipal election.

Sec. 2. The county court, or the governing body of the  
2 municipality, as the case may be, shall call a special "local  
3 option election" upon the filing of a petition signed by not less  
4 than twenty-five per cent of the qualified voters within the  
5 county or municipality.

Sec. 3. The petition shall be in the following form :

2                   Petition for Local Option Election

3   We, the undersigned legally qualified voters, resident within

4 the county (municipality) of \_\_\_\_\_, do hereby  
5 petition that a special election be held within the county (city,  
6 town) of \_\_\_\_\_ on the \_\_\_\_\_ day of  
7 \_\_\_\_\_, 19\_\_\_\_\_, upon the following question :

8 Shall the sale of alcoholic beverages under the West Virginia  
9 Liquor Control Commission be permitted in \_\_\_\_\_ ?

10	Name	Address	Date
11	(Post office or street and number)		

Sec. 4. The county court or governing body of the munici-  
2 pality shall give notice of the special "local option election" by  
3 publication in two newspapers of opposite politics and of gen-  
4 eral circulation in the area in which the election is held. Notice  
5 shall be given at least once each week for two successive weeks,  
6 prior to the election, and printed copies of the order shall be  
7 posted at each place of voting at least ten days before the elec-  
8 tion. If there is only one newspaper published in the county or  
9 municipality, the publication shall be made therein. The election  
10 shall be held not more than ninety nor less than sixty days from  
11 the filing of the petition. The regular election officers of the  
12 county or municipal corporation shall open the polls and con-

13 duct the election in the same manner provided for general elec-  
14 tions.

Sec. 5. On the ballot shall be printed the following:

2 Shall the sale of alcoholic beverages under the West Virginia  
3 Liquor Control Commission be permitted in.....?

4 ☐ Yes.

5 ☐ No.

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

Sec. 6. The ballots shall be counted, returns made and can-  
2 vassed as in general elections, and the results certified by the  
3 commissioners of election to the county court of the county, or  
4 the governing body of the municipality, as the case may be.  
5 The county court or governing body shall without delay certify  
6 the result of the election to the commission.

Sec. 7. Within thirty days after a "local option election" in  
2 which a majority has voted "No," the commission shall close  
3 all state stores and discontinue all agencies situated within the  
4 county or municipality.

Sec. 8. When a "local option election" has been held in a  
2 county or municipality, another such election shall not be held



3 for a period of two years; except that an election may be held  
4 within a municipality without regard to an election held in or  
5 the time limit applicable to the county within which the muni-  
6 cipality, or a part thereof, is located.

#### **ARTICLE VI.**

Section 1. The provisions of this chapter shall not prevent:

2 (1) A person from keeping and possessing alcoholic liquors  
3 in his residence for the personal use of himself, his family, his  
4 servants or his guests if such alcoholic liquors shall have been  
5 lawfully acquired by him;

6 (2) A person, his family, or servants from giving or serving  
7 such alcoholic liquors to guests in said residence, when such gift  
8 or service is not for the purpose of evading the provisions of  
9 this chapter.

Sec. 2. The provisions of this chapter shall not prevent:

2 (1) A person from manufacturing wine at his residence for  
3 consumption at his residence as permitted by section one of this  
4 article;

5 (2) A person from manufacturing and selling unfermented  
6 cider;

7 (3) A person from manufacturing and selling cider made  
8 from apples produced by him within this state, to persons  
9 holding distillery licenses, but such manufacture and sale shall  
10 be under the supervision and regulation of the commission;

11 (4) A person from manufacturing and selling wine made  
12 from fruit produced by him within this state to persons holding  
13 winery licenses, but such manufacture and sale shall be under  
14 the supervision and regulation of the commission.

Sec. 3. The provisions of this chapter do not apply to ethyl  
2 alcohol used:

3 (1) For scientific, chemical, mechanical or industrial pur-  
4 poses.

5 (2) By those authorized to procure ethyl alcohol tax-free  
6 under the acts of Congress and regulations thereunder.

7 (3) In the manufacture of denatured alcohol produced and  
8 used as provided by the acts of Congress and regulations there-  
9 under.

10 (4) In the manufacture of scientific, chemical, mechanical  
11 and industrial preparations or products unfit for beverage  
12 purposes.

Sec. 4. The provisions of this chapter shall not prevent a  
2 person from manufacturing, selling, delivering or shipping:

3 (1) Any medicine containing sufficient medication to pre-  
4 vent its use as a beverage;

5 (2) Any medicinal preparation manufactured in accordance  
6 with formulas prescribed by the United States Pharmacopeia,  
7 and National Formulary, patent and proprietary preparations,  
8 and other bona fide medicinal and technical preparations, which  
9 are manufactured and sold to be used exclusively as medicine  
10 and not as beverages, and the sale of which does not now require  
11 the payment of a United States liquor dealer's tax;

12 (3) Toilet, medicinal and antiseptic preparations not in-  
13 tended for internal human use nor for beverage purposes;

14 (4) Any food products known as flavoring extracts manu-  
15 factured and sold for cooking and culinary purposes only and  
16 not for beverage purposes.

Sec. 5. The provisions of this chapter shall not prevent:

2 (1) A physician from prescribing the use of alcoholic liquors  
3 when necessary for a bona fide patient;

4 (2) A druggist from selling, upon a prescription properly  
5 issued by a physician, alcoholic liquors for medicinal purposes;

6 (3) A physician, dentist, or veterinarian, in the legitimate  
7 practice of his profession, from using and administering alco-  
8 holic liquors;

9 (4) Hospitals, sanitariums, or that division of any institu-  
10 tion which is regularly conducted as a hospital, dispensary or  
11 infirmary, from using or administering alcoholic liquors to bona  
12 fide patients. Institutions and the divisions thereof provided in  
13 this section may carry a stock of alcoholic liquors sufficient for  
14 this purpose;

15 (5) Religious organizations from using wine for sacramental  
16 purposes.

Sec. 6. The provisions of this chapter shall not prevent a  
2 person from bringing into or transferring in this state, in his  
3 possession or in his baggage, and not for resale, alcoholic liquor  
4 in a quantity not to exceed one gallon.

Sec. 7. A person shall not:

2 (1) Manufacture or sell in this state without a license any  
3 alcoholic liquor except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic li-  
5 quor without a license except as permitted by this article;

6     (3) Sell without a license any alcoholic liquor other than  
7 permitted by this article;

8     (4) Adulterate any alcoholic liquor by the addition of any  
9 drug, methyl alcohol, crude, unrectified or impure form of  
10 ethyl alcohol, or other foreign or deleterious substance or liquid;

11    (5) Refill, with alcoholic liquor, any bottle or other con-  
12 tainer in which alcoholic liquor has been sold at retail in this  
13 state;

14    (6) Advertise any alcoholic liquor in this state except in  
15 accordance with the rules and regulations of the commission;

16    (7) Distribute, deal in, possess, or use crowns, stamps or  
17 seals required under the authority of this chapter, except in  
18 accordance with the rules and regulations prescribed by the  
19 commission.

20    A person who violates any provision of this section shall be  
21 guilty of a misdemeanor and upon conviction shall be fined not  
22 less than fifty nor more than five hundred dollars, or confined in  
23 jail not less than thirty days nor more than one year or both  
24 such fine and imprisonment, for the first offense. Upon con-  
25 viction of a second or subsequent offense, the court may in its

26 discretion impose a penalty of confinement in the penitentiary  
27 for a period not to exceed three years.

Sec. 8. A licensed person shall not:

- 2     (1) Sell alcoholic liquors of a kind other than that which  
3 such license or this act authorizes him to sell;
- 4     (2) Sell beer to which wine, spirits, or alcohol has been  
5 added;
- 6     (3) Sell wine to which other alcoholic spirits have been  
7 added, otherwise than as required in the manufacture thereof  
8 under regulations of the commission;
- 9     (4) Sell alcoholic liquors to a person specified in section  
10 nineteen, article four of this chapter;
- 11    (5) Sell alcoholic liquors except as authorized by his license;
- 12    (6) Sell any alcoholic liquor when forbidden by the pro-  
13 visions of this chapter;
- 14    (7) Keep on the premises covered by his license alcoholic  
15 liquor other than that which he is authorized to sell by such  
16 license or by this act.

17    A person who violates any provision of this section shall be  
18 guilty of a misdemeanor and upon conviction shall be fined not  
19 less than fifty nor more than five hundred dollars, or confined

20 in jail not less than thirty days nor more than one year, or  
21 both such fine and imprisonment for the first offense. Upon  
22 conviction of a second or subsequent offense, the court may in  
23 its discretion impose a penalty of confinement in the peniten-  
24 tiary for a period not to exceed three years.

Sec. 9. A person shall not:

- 2 (1) Appear in a public place in an intoxicated condition;
  - 3 (2) Drink alcoholic liquor in a public place;
  - 4 (3) Drink alcoholic liquor in a motor vehicle on any high-  
5 way, street, alley, or in a public garage;
  - 6 (4) Tender a drink of alcoholic liquor to another person in  
7 a public place;
  - 8 (5) Buy alcoholic liquor from a person whom he knows or  
9 should know to be unauthorized by the provisions of this  
10 chapter to sell alcoholic liquor;
  - 11 (6) Possess alcoholic liquor which he knows or should know  
12 was acquired in violation of this chapter.
- 13 A person who violates any provision of this section shall be  
14 guilty of a misdemeanor and upon conviction shall be fined not  
15 less than five nor more than one hundred dollars, or confined

16 in jail not more than sixty days, or both such fine and imprison-  
17 ment.

Sec. 10. A person who unlawfully owns, operates, or main-  
2 tains a plant for the manufacture of distilled spirits, or aids or  
3 abets in the operation or maintenance of such a plant shall be  
4 guilty of a felony, and upon conviction shall be fined not less  
5 than one hundred nor more than one thousand dollars or con-  
6 fined in the penitentiary not less than one nor more than five  
7 years.

Sec. 11. A person who, while engaged in the unlawful  
2 manufacture, transportation or sale of alcoholic liquors, or  
3 while aiding or assisting in any of such acts, has in his actual or  
4 constructive possession a firearm or other lethal weapon, shall  
5 be guilty of a felony, and upon conviction shall be confined in  
6 the penitentiary not less than one nor more than ten years.

Sec. 12. A person who, without authorization under this  
2 chapter, transports alcoholic liquors for the purpose of sale,  
3 shall be guilty of a misdemeanor, and upon conviction shall  
4 be fined not less than fifty nor more than five hundred dollars  
5 or confined in jail not less than sixty days nor more than  
6 one year for the first offense. Upon conviction of a second



7 or subsequent offense, the court may in its discretion impose  
8 a penalty of confinement in the penitentiary for a period not  
9 to exceed three years.

Sec. 13. Except as permitted by section six of this article,  
2 a person shall not import into, or transport in this state any  
3 alcoholic liquor unless it is:

4 (1) Consigned to the commission;

5 (2) Transported or shipped upon the direction of the com-  
6 mission directly to persons licensed to receive alcoholic  
7 liquors at wholesale; or

8 (3) Transported or shipped to persons outside the state for  
9 sale or delivery outside the state.

Sec. 14. Transportation of alcoholic liquors in a quantity  
2 in excess of one gallon, except under authority of sections  
3 two, three, and fifteen of this article, shall be prima facie  
4 evidence of transportation for the purpose of sale, unless prior  
5 to transportation of a greater quantity a permit shall be pro-  
6 cured from the department of public safety.

Sec. 15. A person who violates any order, rule or regulation  
2 of the commission made under the authority of this chapter,  
3 or who violates any provision of this chapter for which punish-

4 ment has not been specifically provided, shall be guilty of a  
5 misdemeanor and upon conviction shall be fined not less than  
6 ten nor more than five hundred dollars or confined in jail not  
7 less than five days nor more than six months, or by both such  
8 fine and imprisonment.

9 If, by the provisions of this chapter, conflicting penalties  
10 are prescribed for an offense, the section providing for the  
11 heavier penalty shall control.

Sec. 16. A place where alcoholic liquor is manufactured,  
2 sold, stored, possessed, given away, or furnished contrary to  
3 law shall be deemed a common and public nuisance. Boats,  
4 cars (including railroad and traction passenger cars operating  
5 in this state), automobiles, wagons, water and air craft, beasts  
6 of burden, or vehicles of any kind shall be deemed places  
7 within the meaning of this section and may be proceeded  
8 against under the provisions of section nineteen of this arti-  
9 cle. A person who shall maintain, or shall aid or abet or  
10 knowingly be associated with others in maintaining such com-  
11 mon and public nuisance shall be guilty of a misdemeanor,  
12 and upon conviction thereof shall be punished by a fine of  
13 not less than one hundred nor more than five hundred dollars,

14 or by confinement in jail not less than sixty days nor more  
15 than six months for each offense, and judgment shall be given  
16 that such nuisance be abated or closed as a place for the manu-  
17 facture, sale, storage, possession, giving away, or furnishing  
18 contrary to law of alcoholic liquor, as the court may determine.

Sec. 17. The commission, its agents, the attorney general,  
2 the prosecuting attorney, or a citizen of the county or munici-  
3 pality where a nuisance as defined in section seventeen of this  
4 article is located, may maintain a suit in equity in the name  
5 of the state to abate and perpetually enjoin the same. Courts  
6 of equity shall have jurisdiction thereof. The injunction may  
7 be granted at the commencement of the suit and no bond shall  
8 be required. On the finding that the material allegations of  
9 the bill are true, the court or judge thereof in vacation shall  
10 order the injunction for such period of time as it or he may  
11 think proper, with the right to dissolve the injunction upon  
12 the application of the owner of the place, if a proper case is  
13 shown for such dissolution.

14 The continuance of the injunction as provided in this section  
15 may be ordered, although the place complained of may not at  
16 the time of hearing be unlawfully used.

Sec. 18. If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that alcoholic liquors are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place in violation of law, the justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic liquors. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants.

Warrants issued under this act for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for alcoholic liquor, may be executed in any part of the state where the same are overtaken, and shall be made returnable before any justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village within whose jurisdiction such automobile, boat, conveyance,

21 vehicle, trunk, grip or other article of baggage, or any of them,  
22 were transported or attempted to be transported contrary to  
23 law.

24 An officer charged with the execution of a warrant issued  
25 under this section, may, whenever it is necessary, break open  
26 and enter a house, or other place herein prescribed.

Sec. 19. All stills and distilling apparatus and material for  
2 the manufacture of the same, and all alcoholic liquors, and  
3 materials used in the manufacture of alcoholic liquors, and all  
4 containers in which alcoholic liquors may be found, which are  
5 kept, stored, possessed or in any manner used in violation of  
6 the provisions of this chapter shall be deemed contraband and  
7 shall be forfeited to the state.

Sec. 20. A motor vehicle or vehicles of any kind used for  
2 transportation of alcoholic liquors for purposes of sale in  
3 violation of section fourteen of this article shall be deemed  
4 contraband and shall be forfeited to the state and proceeded  
5 against in the manner provided for confiscation by section  
6 twenty-two of this article.

7 All vehicles forfeited to the state under the provisions of  
8 this section shall be turned over to the commission which may

9 retain the same for public use in the administration and enforcement of this chapter. If it has no need for the vehicle, it may order its destruction or sale unless the department of public safety requests it in which case the commission shall turn it over to the said department.

14 The net proceeds of sales made under this section shall be paid into the state treasury in the manner prescribed for receipts from state stores and agencies.

Sec. 21. Proceedings for confiscation of articles declared contraband and forfeited to the state under section twenty-one of this article shall be as follows:

4 (1) When such articles have been seized under or without a warrant provided for in section nineteen of this article, by an officer charged with the enforcement of this chapter, the officer shall produce the articles and the person in whose possession they were found, if any, and if no person be found in possession the return shall so state. A copy of the warrant shall be posted on the door of the place where the articles were found, or if there be no door, then in any conspicuous place upon the premises;

13 (2) Upon the return of the warrant, the justice of the

14 peace, circuit, criminal, or intermediate court, or judge thereof  
15 in vacation, or the mayor of any city, town or village, shall  
16 fix a time not less than ten nor more than thirty days there-  
17 after for hearing of the return, at which hearing it shall be  
18 determined whether or not the articles seized were used or  
19 in any manner possessed in violation of this chapter. If no  
20 claimant appear, the justice of the peace, circuit, criminal or  
21 intermediate court, or judge thereof in vacation, or the mayor  
22 of the city, town or village shall declare the articles seized  
23 forfeited to the state, and if such articles be not necessary as  
24 evidence in any proceeding, shall turn the same over to the  
25 commission. At such hearing a person claiming any interest  
26 in an article seized may appear and file a written claim setting  
27 forth particularly the character and extent of his interest,  
28 whereupon, if the trial be before a justice of the peace or  
29 mayor he shall forthwith certify the warrant, the articles  
30 seized and the claim filed to the circuit court or other court  
31 having jurisdiction which court shall docket the case, and  
32 shall hear and determine the validity of such claim. If, upon  
33 hearing, the evidence warrants, the court shall enter a judg-  
34 ment of forfeiture and order the articles turned over to the

35 commission. Action under this section and the forfeiture  
36 of articles thereunder shall not bar prosecution under any  
37 other provisions of this chapter ;

38 (3) Articles forfeited to the state and turned over to the  
39 commission in accordance with the provisions of this section  
40 shall be destroyed or sold as the commission deems proper.  
41 The net proceeds of sales made under this section shall be paid  
42 into the state treasury in the manner prescribed by this chapter  
43 for receipts from state stores.

Sec. 22. No action shall be maintained to recover the price  
2 of alcoholic liquor sold in violation of the provisions of this  
3 chapter, except that the state or the commission may recover  
4 from any person the price of any alcoholic liquor purchased by  
5 him in violation of section twenty, article four of this chapter,  
6 and from any person who may have sold alcoholic liquors in  
7 violation of the provisions of this chapter, the consideration re-  
8 ceived by him therefor.

Sec. 23. If any article, a section or part of an article or sec-  
2 tion of this chapter is for any reason declared unconstitutional,  
3 or otherwise invalid, the decision of the court shall not affect the  
4 validity of any remaining article, section or part of an article  
5 or section thereof.



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

*Clinton L. Howard*

Chairman Senate Committee

*Arnold M. Pickens*

Chairman House Committee

Originated in the

*House of Delegates*

Takes effect

*March 1, 1935* passage.

*Frank A. Inghy*

Clerk of the Senate

*Geo. L. Stach*

Clerk of the House of Delegates

*Chas. E. Hodges*

President of the Senate

*John J. Belter*

Speaker House of Delegates.

The within *is approved* this the *25*<sup>th</sup>

day of *February*, 1935.

*H. S. Kump*

Governor

Filed in the office of the Secretary of State  
of West Virginia.

**FEB 25 1935**

*James S. O'Brien*

Secretary of State