ENROLLED
House Bill No. 247
(By Mr. Van Sickler)

[Passed March 13, 1937; in effect from passage.]

AN ACT to amend and reenact section twelve, article three, and sections nine, twelve, thirteen, twenty and twenty-one, article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, and to repeal section fourteen of said article and chapter, as enacted by chapters four and five, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to the state control of alcoholic liquors.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, and sections nine, twelve, thirteen, twenty and twenty-one, article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapters four and five, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and
reenacted, and section fourteen of said article and chapter be re-
pealed, to read as follows:

**Article III.**

Section 12. The commission shall fix the days on which
state stores shall be open and the hours of opening and clos-
ing, and the hours during which agencies may sell alcoholic
liquors. Stores shall not be open nor shall agencies sell alco-
holic liquors on:

1. Sundays.

2. Any general election day.

**Article VI.**

Sec. 9. *Intoxication or Drinking in Public Places; Buying*
*or Possessing Alcoholic Liquors Unlawfully Acquired; Pen-
alties.* A person shall not:

1. (1) Appear in a public place in an intoxicated condition;
2. (2) Drink alcoholic liquor in a public place;
3. (3) Drink alcoholic liquor in a motor vehicle on any high-
way, street, alley or in a public garage;
4. (4) Tender a drink of alcoholic liquor to another per-
son in a public place;
5. (5) Possess alcoholic liquor in the amount in excess of
one gallon, in containers not bearing stamps or seals of the
commission, without having first obtained written authority
from the said commission therefor;

(6) Possesses any alcoholic liquor which was manufactured
or acquired in violation of the provisions of this chapter.

Any person who violates subsections one, two, three or four
of this section shall be guilty of a misdemeanor and upon
conviction shall be fined not less than five nor more than one
hundred dollars, or confined in jail not more than sixty days,
or both such fine and imprisonment. Any person who vio-
lates subsection five or six of this section shall be guilty of
a misdemeanor, and upon conviction shall be fined not less
than one hundred dollars nor more than five hundred dol-
lars, or confined in jail not less than sixty days nor more than
twelve months, or both such fine and imprisonment, and upon
conviction of a second or subsequent offense he shall be guilty
of a felony and shall be confined in the penitentiary of this
state for a period of not less than one year nor more than	hree years.

Sec. 12. Transportation of Alcoholic Liquors Lawfully Re-
quired; Permits; Penalties. The commission may adopt such
regulations governing the transportation of alcoholic liquors,
lawfully acquired, into or through the state in quantities in
excess of one gallon as it may deem necessary to confine such
transportation to legitimate purposes and may issue transport-
tation permits in accordance with such regulations, and collect
a fee therefor fixed by the commission.

A person who, without authorization under this chapter,
transports alcoholic liquors in quantities in excess of one
gallon or in any amount for the purpose of sale or in any
amount manufactured or acquired contrary to the provisions
of this chapter, shall be guilty of a misdemeanor, and upon
conviction shall be fined not less than one hundred nor more
that five hundred dollars, or confined in jail not to exceed
one year, or both such fine and imprisonment for the first
offense. Upon conviction of a second or subsequent offense,
he shall be guilty of a felony and confined in the penitentiary
of this state for a period of not less than one nor more than
three years.

Sec. 13. Importing Into, and Transporting Liquors in
State. Except as permitted by section six of this article, a
person shall not import into, or transport in this state, any
alcoholic liquors, unless it is:
(1) Consigned to the commission;

(2) Transported or shipped upon the direction of the commission directly to persons licensed to receive alcoholic liquors at wholesale;

(3) Transported or shipped into or through the state to persons outside the state upon transportation permits issued by the commission.

Sec. 14. Section fourteen is hereby repealed.

Sec. 20. Vehicles Used for Transportation of Alcoholic Liquors Deemed Contraband; Forfeiture to the State; Disposition of Same. A conveyance of any kind, either on land, water, or in the air, used for transportation of alcoholic liquors in violation of section twelve of this article, shall be deemed contraband and shall be forfeited to the state and proceeded against in the manner provided for confiscation by section twenty-one of this article.

Any such conveyance forfeited to the state under the provisions of this section shall be turned over to the commission, which may retain the same for public use in the administration and enforcement of this chapter. If it has no need for the conveyance, it may order its destruction or sale unless the de-
part of public safety requests it, in which case the com-
mmission shall turn it over to the said department.
The net proceeds of sales made under this section shall be
paid into the state treasury in the manner prescribed for re-
eceipts from state stores and agencies.

Sec. 21. Court Procedure as to Contraband and Forfeited
Articles. Proceedings for confiscation of articles, convey-
ances or vehicles declared contraband and forfeited to the
state under section twenty shall be had in the circuit or in-
fier court having criminal jurisdiction, either in vacation
or term time, in the county where such articles, conveyances
or vehicles were seized, and the procedure shall be as fol-
lows:

(1) When such articles, conveyances or vehicles have been
seized under or without a warrant provided for in section
eighteen of this act, by an officer charged with the enforce-
ment of this chapter, the officer shall take possession of such
article, conveyance or vehicle and deliver the same and the
alcoholic liquors so seized to the sherif of the county in which
such seizure was made, taking his receipt therefor in dupli-
cate.
(2) The officer making such seizure shall forthwith report in writing of such seizure to the prosecuting attorney of the county in which such seizure was made and to the commission.

(3) Within not less than ten days nor more than sixty days after receiving notice of any such seizure, the prosecuting attorney for the county shall file, in the name of the state, a petition against the seized property, in the clerk's office of the circuit court of the county, returnable to the circuit court or inferior court having criminal jurisdiction, which petition shall be filed by the clerk without fee and may be heard by said court or judge thereof in vacation.

(4) Such petition shall allege the seizure, and set forth in general terms, the grounds of forfeiture of the seized property, and shall pray that the same be forfeited to the state and the proceeds disposed of according to law, and that all persons concerned or interested may appear and show cause why said property should not be forfeited to the state.

(5) The owner of and all persons in any manner then indebted or liable for the purchase price of said property, and any person having a lien thereon, if they be known to the
prosecuting attorney, shall be made parties defendant there-

to, and shall be served with the notice issued by the clerk

of such court, hereinafter provided for, in the manner pro-

vided by law for serving a notice, at least ten days before

the day therein specified for the hearing on said petition, if

they be residents of this state, and, if they be unknown or

nonresidents, or cannot with reasonable diligence be found in

this state, they shall be deemed sufficiently served by publi-

cation of said notice once a week for two successive weeks in

some newspaper published in said county, or, if none be pub-

lished therein, then in some newspaper having a general cir-


culation therein.

(6) Any person claiming to be the owner of such seized

property, or to hold a lien thereon or have an interest there-

in, may appear at any time before final judgment of the trial

court, and be made a party defendant to the petition so filed,

which appearance shall be by answer, under oath, in which

shall be clearly set forth the nature of such defendant’s claim

or interest.

(7) If the court or judge thereof in vacation shall find

that illegally acquired alcoholic liquors or alcoholic liquors
being illegally transported in amounts in excess of one gallon, were not found in such conveyance or vehicle at the time of the seizure thereof, the judgment of the court shall be to entirely relieve said property from forfeiture, and no costs shall be taxed against such claimant.

(8) If the court or judge thereof in vacation trying the issue, shall find or if it be admitted that said conveyance or vehicle at the time of the seizure, contained illegally acquired liquor or that alcoholic liquors were being illegally transported therein, nevertheless:

(a) If it shall appear to the satisfaction of the court that such claimant is the bona fide owner and was such owner at the time of such seizure and that he was ignorant of such illegal use thereof and the illegal use was without his connivance or consent, expressed or implied, the court shall relieve said conveyance or vehicle from forfeiture and restore it to such claimant, and no cost shall be taxed against such claimant,

(b) If it shall appear to the satisfaction of the court that such claimant is the holder of a bona fide lien against the property and was the holder of such lien at the time of such
seizure and that he was ignorant of such illegal use thereof,
or the use so made of such conveyance or vehicle was without
his connivance or consent, expressed or implied, and that the
claimant has perfected his lien, the court shall,
(1) If the lien so established is equal to or more than the
value of the conveyance or vehicle, such conveyance or vehicle
shall be delivered to the lienor upon the payment of storage
and cost,
(2) If the lien is less than the value of the conveyance or
vehicle, the lienor may have said conveyance or vehicle de-
divered to him upon payment of the difference in amount as
determined in such proceedings; but should the lienor not
demand delivery as aforesaid, an order shall be made for the
sale of said property by the sheriff of the county, in the man-
ner prescribed by law for sale of personal property under
execution, out of the proceeds of which sale shall be paid,
first, the storage, if any, second, the cost, third, the lien, and
the residue, if any, shall be paid to the commission.
(9) If, however, no valid lien or claim is established
against the seized property upon the trial of the petition,
or, if it shall be determined that the owner thereof was him-
self using the same at the time of the seizure or that such illegal use was with his knowledge or consent, express or implied, the said property shall be completely forfeited to the state and turned over to the commission in accordance with the provisions of this chapter.

(10) In every case, the alcoholic liquors so seized shall be deemed contraband and forfeited to the state as heretofore provided.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the

Takes effect...passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...this the...day of July,...1937.

Governor.

Filed in the office of the Secretary of State of West Virginia. MAR 19 1937
Wm. S. O'BRIEN,
Secretary of State