

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

HOUSE BILL No. 247

(By Mr. VAN SICKLER)



PASSED March 13, 1937

In Effect from Passage

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[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reenacted, and section fourteen of said article and chapter be repealed, to read as follows: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 closing, and the hours during which agencies may sell alcoholic liquors. Stores shall not be open nor shall agencies sell alcoholic 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; Penalties.* A person shall not:

- (1) Appear in a public place in an intoxicated condition;
- (2) Drink alcoholic liquor in a public place;
- (3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
- (4) Tender a drink of alcoholic liquor to another person in a public place;
- (5) Possess alcoholic liquor in the amount in excess of one gallon, in containers not bearing stamps or seals of the

12 commission, without having first obtained written authority
13 from the said commission therefor;

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

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

30 Sec. 12. *Transportation of Alcoholic Liquors Lawfully Re-*
31 *quired; Permits; Penalties.* The commission may adopt such
32 regulations governing the transportation of alcoholic liquors,
33

4 lawfully acquired, into or through the state in quantities in
5 excess of one gallon as it may deem necessary to confine such
6 transportation to legitimate purposes and may issue transpor-
7 tation permits in accordance with such regulations, and collect
8 a fee therefor fixed by the commission.

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

Sec. 13. *Importing Into, and Transporting Liquors in*
2 *State.* Except as permitted by section six of this article, a
3 person shall not import into, or transport in this state, any
4 alcoholic liquors, unless it is:

- 5 (1) Consigned to the commission;
- 6 (2) Transported or shipped upon the direction of the com-
7 mission directly to persons licensed to receive alcoholic liquors
8 at wholesale;
- 9 (3) Transported or shipped into or through the state to
10 persons outside the state upon transportation permits issued
11 by the commission.

Sec. 14. Section fourteen is hereby repealed.

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

9 Any such conveyance forfeited to the state under the pro-
10 visions of this section shall be turned over to the commission,
11 which may retain the same for public use in the administra-
12 tion and enforcement of this chapter. If it has no need for the
13 conveyance, it may order its destruction or sale unless the de-

14 partment of public safety requests it, in which case the com-
15 mission shall turn it over to the said department.

16 The net proceeds of sales made under this section shall be
17 paid into the state treasury in the manner prescribed for re-
18 ceipts from state stores and agencies.

Sec. 21. *Court Procedure as to Contraband and Forfeited*

2 *Articles.* Proceedings for confiscation of articles, convey-
3 ances or vehicles declared contraband and forfeited to the
4 state under section twenty shall be had in the circuit or in-
5 ferior court having criminal jurisdiction, either in vacation
6 or term time, in the county where such articles, conveyances
7 or vehicles were seized, and the procedure shall be as fol-
8 lows:

9 (1) When such articles, conveyances or vehicles have been
10 seized under or without a warrant provided for in section
11 eighteen of this act, by an officer charged with the enforce-
12 ment of this chapter, the officer shall take possession of such
13 article, conveyance or vehicle and deliver the same and the
14 alcoholic liquors so seized to the sheriff of the county in which
15 such seizure was made, taking his receipt therefor in dupli-
16 cate.

17 (2) The officer making such seizure shall forthwith re-
18 port in writing of such seizure to the prosecuting attorney of
19 the county in which such seizure was made and to the com-
20 mission.

21 (3) Within not less than ten days nor more than sixty
22 days after receiving notice of any such seizure, the prose-
23 cuting attorney for the county shall file, in the name of the
24 state, a petition against the seized property, in the clerk's of-
25 fice of the circuit court of the county, returnable to the cir-
26 cuit court or inferior court having criminal jurisdiction, which
27 petition shall be filed by the clerk without fee and may be
28 heard by said court or judge thereof in vacation.

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

35 (5) The owner of and all persons in any manner then
36 indebted or liable for the purchase price of said property,
37 and any person having a lien thereon, if they be known to the

38 prosecuting attorney, shall be made parties defendant there-
39 to, and shall be served with the notice issued by the clerk
40 of such court, hereinafter provided for, in the manner pro-
41 vided by law for serving a notice, at least ten days before
42 the day therein specified for the hearing on said petition, if
43 they be residents of this state, and, if they be unknown or
44 nonresidents, or cannot with reasonable diligence be found in
45 this state, they shall be deemed sufficiently served by publi-
46 cation of said notice once a week for two successive weeks in
47 some newspaper published in said county, or, if none be pub-
48 lished therein, then in some newspaper having a general cir-
49 culation therein.

50 (6) Any person claiming to be the owner of such seized
51 property, or to hold a lien thereon or have an interest there-
52 in, may appear at any time before final judgment of the trial
53 court, and be made a party defendant to the petition so filed,
54 which appearance shall be by answer, under oath, in which
55 shall be clearly set forth the nature of such defendant's claim
56 or interest.

57 (7) If the court or judge thereof in vacation shall find
58 that illegally acquired alcoholic liquors or alcoholic liquors

59 being illegally transported in amounts in excess of one gal-
60 lon, were not found in such conveyance or vehicle at the time
61 of the seizure thereof, the judgment of the court shall be to
62 entirely relieve said property from forfeiture, and no costs
63 shall be taxed against such claimant.

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

69 (a) If it shall appear to the satisfaction of the court that
70 such claimant is the bona fide owner and was such owner at
71 the time of such seizure and that he was ignorant of such
72 illegal use thereof and the illegal use was without his con-
73 nivance or consent, expressed or implied, the court shall re-
74 lieve said conveyance or vehicle from forfeiture and restore
75 it to such claimant, and no cost shall be taxed against such
76 claimant,

77 (b) If it shall appear to the satisfaction of the court that
78 such claimant is the holder of a bona fide lien against the
79 property and was the holder of such lien at the time of such

80 seizure and that he was ignorant of such illegal use thereof,
81 or the use so made of such conveyance or vehicle was without
82 his connivance or consent, expressed or implied, and that the
83 claimant has perfected his lien, the court shall,

84 (1) If the lien so established is equal to or more than the
85 value of the conveyance or vehicle, such conveyance or vehicle
86 shall be delivered to the lienor upon the payment of storage
87 and cost,

88 (2) If the lien is less than the value of the conveyance or
89 vehicle, the lienor may have said conveyance or vehicle de-
90 livered to him upon payment of the difference in amount as
91 determined in such proceedings; but should the lienor not
92 demand delivery as aforesaid, an order shall be made for the
93 sale of said property by the sheriff of the county, in the man-
94 ner prescribed by law for sale of personal property under
95 execution, out of the proceeds of which sale shall be paid,
96 first, the storage, if any, second, the cost, third, the lien, and
97 the residue, if any, shall be paid to the commission.

98 (9) If, however, no valid lien or claim is established
99 against the seized property upon the trial of the petition,
100 or, if it shall be determined that the owner thereof was him-

101 self using the same at the time of the seizure or that such
102 illegal use was with his knowledge or consent, express or
103 implied, the said property shall be completely forfeited to the
104 state and turned over to the commission in accordance with
105 the provisions of this chapter.

106 (10) In every case, the alcoholic liquors so seized shall be
107 deemed contraband and forfeited to the state as heretofore
108 provided.

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

Paul B. Galt
.....
Chairman Senate Committee

W. B. Walter
.....
Chairman House Committee

Originated in the.....

Takes effect..... passage

Charles D. Gandy
.....
Clerk of the Senate

Mo S. Wallace
.....
Clerk of the House of Delegates

Chas. E. Hoyle
.....
President of the Senate

J. K. Thomas
.....
Speaker House of Delegates

The within *Approved* this the *19*

day of *March*, 1937.

James I. Johnston
.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 19 1937**

Wm. S. O'BRIEN,
Secretary of State