

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

## ENROLLED

*Committee Substitute  
for*  
HOUSE BILL No. 1162

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

MAR 29 11 33 PM '72

(By Mr. Hewe)

PASSED March 10 1972

In Effect 90 days from Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE

THIS DATE 3-29-72

*2911-043 ✓*

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 1162**  
(By MR. GREWE)

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(Originating in the House Committee on the Judiciary)

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[Passed March 10, 1972; in effect ninety days from passage.]

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AN ACT to amend and reenact section four, article one; and section thirteen, article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to permitting the retail sale of wine of less than fifteen percent alcohol by volume by private licensee; license for importer of wine, fees and duties connected therewith; license for distributor of wine, fees and duties connected therewith; collection of additional sales tax; allowing certain municipal taxes; prohibition of additional tax by municipalities; license for retailer of wine, fees and duties connected therewith; restriction on issuance of retailer license; duties and powers of alcohol beverage control commissioner; promulgation of rules and regulations; revocation or suspension of license; hearing; review; and providing a severability clause.

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

That section four, article one; and section thirteen, article six, chapter sixty of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eight, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS.**

**§60-1-4. Sales to be made by or through commissioner or as provided in this chapter.**

- 1 Except as provided elsewhere in this chapter, alcoholic
- 2 liquors shall be sold at wholesale and retail in this state
- 3 only by or through the West Virginia alcohol beverage
- 4 control commissioner or retail agencies established by
- 5 him or any predecessor commissioner or commission.

**ARTICLE 6. MISCELLANEOUS PROVISIONS.**

**§60-6-13. Restrictions on importing into, and transporting liquors in state.**

- 1 Except as permitted by section six of this article and
- 2 article eight of this chapter, a person shall not import
- 3 into, or transport in this state, any alcoholic liquors, un-
- 4 less it is:
- 5 (1) Consigned to the commissioner;
- 6 (2) Transported or shipped upon the direction of the
- 7 commissioner directly to persons licensed to receive al-
- 8 coholic liquors at wholesale;
- 9 (3) Transported or shipped into or through the state
- 10 to persons outside the state upon transportation permits
- 11 issued by the commissioner.

**ARTICLE 8. SALE OF WINE.**

**§60-8-1. Definitions.**

- 1 Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:
- 3 (a) "Importer" means any person who causes wines to
- 4 be transported into the state for sale to distributors under
- 5 authority of this article.
- 6 (b) "Distributor" means any person selling or distrib-
- 7 uting wine to retailers under authority of this article.
- 8 (c) "Retailer" means any person selling wine to the
- 9 public at the retail sales level under authority of this
- 10 article.

11 (d) "Wine" means any alcoholic beverage obtained by  
12 the fermentation of the natural content of fruits, or other  
13 agricultural products, containing sugar, which contains  
14 no more than fourteen percent alcohol by volume.

**§60-8-2. Applicability of chapter.**

1 A person shall not sell, possess for sale, transport, or  
2 distribute wine in this state after the first day of Septem-  
3 ber, one thousand nine hundred seventy-two, except in  
4 accordance with the provisions of this article.

**§60-8-3. License of importer; fees; duties of importer.**

1 No person shall cause wine to be transported into this  
2 state for sale to a distributor without first obtaining from  
3 the commissioner a license to operate as an importer. The  
4 fee for such license shall be two hundred dollars per  
5 year or any part thereof. Such licenses shall expire on  
6 the thirtieth day of June of each year. Each licensed im-  
7 porter shall register with the commissioner each label  
8 offered for sale in the state and shall pay a fee of three  
9 dollars and fifty cents for the registration of each such  
10 label. Each licensed importer shall furnish to the com-  
11 missioner a manifest of all wines transported into the  
12 state. No importer shall terminate any sales agreement  
13 with any distributor nor discontinue selling to any dis-  
14 tributor without giving such distributor at least six  
15 months notice of such importer's intention to so terminate  
16 or discontinue.

**§60-8-4. License of distributor; fee; duties of distributor; bond;  
municipal tax.**

1 No person shall offer for sale or sell any wine to a re-  
2 tailer in this state without first obtaining from the com-  
3 missioner a license to operate as a distributor. The fee  
4 for such license shall be five hundred dollars per year or  
5 any part thereof. Such licenses shall expire on the thir-  
6 tieth day of June each year. All sales to retailers shall  
7 be on a cash basis. Such distributors shall make sales to  
8 retailers only on a uniform price basis. Each distributor,  
9 prior to being licensed hereunder, shall furnish to the  
10 commissioner a bond in the penal sum of twenty thousand  
11 dollars with a corporate surety authorized to transact

12 business in the state, payable to the state, and conditioned  
13 on the payment of all taxes and fees herein prescribed  
14 and on the faithful performance of and compliance with  
15 the provisions of this article. Municipalities may impose  
16 a sales tax not exceeding three percent on the total sales  
17 made by any distributor to any retailer situate in such  
18 municipality. Such tax shall be collected by such dis-  
19 tributor from such retailer.

**§60-8-5. Additional sales tax; municipal sales tax prohibited.**

1 In addition to all fees and taxes imposed by this code,  
2 each distributor shall pay to the commissioner an ad-  
3 ditional sales tax of thirty-five cents per gallon, and in  
4 like ratio on other volumes, of wines which are classified  
5 as still wines and sold by such distributor to retailers,  
6 and an additional sales tax of seventy-five cents per  
7 gallon, and in like ratio on other volumes, of wines which  
8 are classified as sparkling wines and sold by such distrib-  
9 utor to retailers. On the tenth day of each month, on  
10 forms prescribed by the commissioner, each distributor  
11 shall account for and transmit, to the commissioner, tax to  
12 be paid on sales of the previous calendar month. Except  
13 as provided in section four of this article and notwith-  
14 standing any other provisions to the contrary, no mu-  
15 nicipal corporation in this state shall have the authority  
16 to impose a sales tax on the sale of any wine from a dis-  
17 tributor to a retailer.

**§60-8-6. License of retailer; fee; duties of retailer; hours of operation.**

1 After the first day of September, one thousand nine  
2 hundred seventy-two, no person shall offer for sale or  
3 sell any wine to the public at the retail level without first  
4 having obtained from the commissioner a license to  
5 operate as a retailer. The fee for such license shall be one  
6 hundred fifty dollars per year or any part thereof. Such  
7 licenses shall expire on the thirtieth day of June of each  
8 year. A retailer shall have a separate license for each  
9 retail outlet. No retailer shall also be licensed as a private  
10 club as provided for in article seven of this chapter or  
11 as a Class A retail dealer in nonintoxicating beer as pro-  
12 vided in article sixteen, chapter eleven of this code. Sales

13 by a retailer shall be in a sealed container only. It shall be  
 14 unlawful for any retailer, his servants, agents or em-  
 15 ployees to sell or deliver wine on weekdays between the  
 16 hours of two o'clock a.m. and seven o'clock a.m., or be-  
 17 tween the hours of two o'clock a.m. and one o'clock p.m.  
 18 on any Sunday.

**§60-8-7. Duties and powers of commissioner; rules and regula-  
 tions.**

1 It shall be the duty of the commissioner to enforce the  
 2 provisions of this article and reasonable rules and regu-  
 3 lations promulgated hereunder.

4 The commissioner shall promulgate such reasonable  
 5 rules and regulations as may be necessary for the execu-  
 6 tion and enforcement of the provisions of this article,  
 7 which may include, but shall not be limited to, the method  
 8 of use, handling, service and sale of wines, and the quali-  
 9 fication of licensees. Such rules and regulations shall be  
 10 promulgated in accordance with the provisions of article  
 11 three of chapter twenty-nine-a of the code in like manner  
 12 as if said article three of chapter twenty-nine-a was set  
 13 forth in extenso in this section.

**§60-8-8. Revocation or suspension of license; investigation;  
 right to a hearing; procedure upon refusal to issue  
 license or suspension or revocation of license; costs  
 and bond; hearing; judicial review; appeal; legal  
 assistance for commissioner.**

1 (a) The commissioner may on his own motion, or shall  
 2 on the sworn complaint of any person, conduct an in-  
 3 vestigation to determine if any provisions of this article  
 4 have been violated by any licensee. The commissioner  
 5 may suspend or revoke any licensee's license if he finds  
 6 that such licensee has violated any provision of this ar-  
 7 ticle, or if he finds the existence of any ground on which  
 8 a license could have been refused, if such licensee were  
 9 then applying for the same, and if the commissioner shall  
 10 find that a licensee has willfully violated any provision of  
 11 this article he shall revoke such licensee's license.

12 (b) Whenever any distributor fails or refuses to keep  
 13 the bond required by section four of this article in full

14 force and effect, such distributor's license shall be auto-  
15 matically suspended until such time as bond required by  
16 said section four is furnished to the commissioner, at  
17 which time such suspension shall be vacated.

18 (c) Whenever the commissioner shall refuse to issue  
19 a license, or shall suspend or revoke a license, he shall  
20 make and enter an order to that effect, and cause a copy  
21 of the same to be served in person or by certified mail,  
22 return receipt requested on the licensee or applicant.

23 (d) Any applicant or licensee, as the case may be,  
24 adversely affected by such order shall have a right to a  
25 hearing thereon before the commissioner, providing that  
26 demand in writing for such hearing is served upon the  
27 commissioner, within ten days following the receipt by  
28 such applicant or licensee of said certified copy of said  
29 order. The service of such demand for a hearing upon the  
30 commissioner shall operate to suspend the execution of  
31 the order with respect to which a hearing is being de-  
32 manded, except an order suspending a license under the  
33 provisions of subsection (b) of this section. The person  
34 demanding a hearing shall give security for the cost of  
35 such hearing in such form and amount as the commis-  
36 sioner may reasonably require. If the person demanding  
37 such hearing does not substantially prevail in such hear-  
38 ing or upon judicial review thereof as hereinafter pro-  
39 vided, then the costs of such hearing shall be assessed  
40 against him by the commissioner and may be collected  
41 by an action at law or other proper remedy.

42 (e) The commissioner shall immediately set a date  
43 for such hearing and notify the person demanding such  
44 hearing thereof, which hearing shall be held within thirty  
45 days after receipt of said demand. At such hearing the  
46 commissioner shall hear evidence and thereafter make  
47 and enter an order supported by findings of facts, affirm-  
48 ing, modifying or vacating the order with respect to which  
49 such hearing was held, which order shall be final unless  
50 vacated or modified upon judicial review thereof.

51 (f) Such hearing and the administrative procedure  
52 prior to, during and following the same shall be governed  
53 by and in accordance with the provisions of article five,

54 chapter twenty-nine-a of this code in like manner as if  
55 the provisions of article five were set forth in extenso in  
56 this section.

57 (g) Any person adversely affected by an order en-  
58 tered following such hearing shall have the right of  
59 judicial review thereof in accordance with the provisions  
60 of section four, article five, chapter twenty-nine-a of this  
61 code with like effect as if the provisions of said section  
62 four were set forth in extenso herein.

63 (h) The judgment of a circuit court reviewing such  
64 order of the commissioner shall be final unless reversed,  
65 vacated or modified on appeal to the supreme court of  
66 appeals in accordance with the provisions of section one,  
67 article six, chapter twenty-nine-a of this code.

68 (i) Legal counsel and services for the commissioner  
69 in all such proceedings in any circuit court and the su-  
70 preme court of appeals shall be provided by the attorney  
71 general or his assistants and in any proceedings in any  
72 circuit court by the prosecuting attorney of that county  
73 as well, all without additional compensation.

**§60-8-9. Severability.**

1 If any article, section, subsection, provision, clause or  
2 phrase of this chapter or the application thereof to any  
3 person or circumstance is held unconstitutional or in-  
4 valid, such unconstitutionality or invalidity shall not af-  
5 fect other articles, sections, subsections, provisions, clauses  
6 or phrases or applications of the chapter, and to this end  
7 each and every article, section, subsection, provision,  
8 clause and phrase of this chapter is declared to be sever-  
9 able. The Legislature hereby declares that it would have  
10 enacted the remaining articles, sections, subsections, pro-  
11 visions, clauses and phrases of this chapter even if it had  
12 known that any articles, sections, subsections, provisions,  
13 clauses and phrases thereof would be declared to be un-  
14 constitutional or invalid, and that it would have enacted  
15 this chapter even if it had known that the application  
16 thereof to any person or circumstance would be held to  
17 be unconstitutional or invalid.



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

William H. Beall  
Chairman Senate Committee

Phyllis J. Rutledge  
Chairman House Committee

Originated in the House.

In effect ninety days from passage.

Howard Robinson  
Clerk of the Senate

Clara Blankenship  
Clerk of the House of Delegates

George B. Brown  
President of the Senate

Lewis D. McManis  
Speaker House of Delegates

The within disapproved this the 27th  
day of March, 1972.

Arch A. Shouse, Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/17/72

Time 1:00 p.m.