WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
Committee Substitute for
HOUSE BILL No. 1162

(By Mr. ________)

PASSED March 10, 1972

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 1162
(By Mr. Grewe)

(Originating in the House Committee on the Judiciary)

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

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.

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

Except as permitted by section six of this article and article eight of this chapter, a person shall not import into, or transport in this state, any alcoholic liquors, unless it is:

(1) Consigned to the commissioner;
(2) Transported or shipped upon the direction of the commissioner 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 commissioner.

ARTICLE 8. SALE OF WINE.

§60-8-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) “Importer” means any person who causes wines to be transported into the state for sale to distributors under authority of this article.
(b) “Distributor” means any person selling or distributing wine to retailers under authority of this article.
(c) “Retailer” means any person selling wine to the public at the retail sales level under authority of this article.
(d) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar, which contains no more than fourteen percent alcohol by volume.

§60-8-2. Applicability of chapter.

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

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

No person shall cause wine to be transported into this state for sale to a distributor without first obtaining from the commissioner a license to operate as an importer. The fee for such license shall be two hundred dollars per year or any part thereof. Such licenses shall expire on the thirtieth day of June of each year. Each licensed importer shall register with the commissioner each label offered for sale in the state and shall pay a fee of three dollars and fifty cents for the registration of each such label. Each licensed importer shall furnish to the commissioner a manifest of all wines transported into the state. No importer shall terminate any sales agreement with any distributor nor discontinue selling to any distributor without giving such distributor at least six months notice of such importer's intention to so terminate or discontinue.

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

No person shall offer for sale or sell any wine to a retailer in this state without first obtaining from the commissioner a license to operate as a distributor. The fee for such license shall be five hundred dollars per year or any part thereof. Such licenses shall expire on the thirtieth day of June each year. All sales to retailers shall be on a cash basis. Such distributors shall make sales to retailers only on a uniform price basis. Each distributor, prior to being licensed hereunder, shall furnish to the commissioner a bond in the penal sum of twenty thousand dollars with a corporate surety authorized to transact
business in the state, payable to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article. Municipalities may impose a sales tax not exceeding three percent on the total sales made by any distributor to any retailer situate in such municipality. Such tax shall be collected by such distributor from such retailer.

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

In addition to all fees and taxes imposed by this code, each distributor shall pay to the commissioner an additional sales tax of thirty-five cents per gallon, and in like ratio on other volumes, of wines which are classified as still wines and sold by such distributor to retailers, and an additional sales tax of seventy-five cents per gallon, and in like ratio on other volumes, of wines which are classified as sparkling wines and sold by such distributor to retailers. On the tenth day of each month, on forms prescribed by the commissioner, each distributor shall account for and transmit, to the commissioner, tax to be paid on sales of the previous calendar month. Except as provided in section four of this article and notwithstanding any other provisions to the contrary, no municipal corporation in this state shall have the authority to impose a sales tax on the sale of any wine from a distributor to a retailer.

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

After the first day of September, one thousand nine hundred seventy-two, no person shall offer for sale or sell any wine to the public at the retail level without first having obtained from the commissioner a license to operate as a retailer. The fee for such license shall be one hundred fifty dollars per year or any part thereof. Such licenses shall expire on the thirtieth day of June of each year. A retailer shall have a separate license for each retail outlet. No retailer shall also be licensed as a private club as provided for in article seven of this chapter or as a Class A retail dealer in nonintoxicating beer as provided in article sixteen, chapter eleven of this code. Sales
by a retailer shall be in a sealed container only. It shall be unlawful for any retailer, his servants, agents or employees to sell or deliver wine on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m. on any Sunday.

§60-8-7. Duties and powers of commissioner; rules and regulations.

It shall be the duty of the commissioner to enforce the provisions of this article and reasonable rules and regulations promulgated hereunder.

The commissioner shall promulgate such reasonable rules and regulations as may be necessary for the execution and enforcement of the provisions of this article, which may include, but shall not be limited to, the method of use, handling, service and sale of wines, and the qualification of licensees. Such rules and regulations shall be promulgated in accordance with the provisions of article three of chapter twenty-nine-a of the code in like manner as if said article three of chapter twenty-nine-a was set 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.

(a) The commissioner may on his own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article have been violated by any licensee. The commissioner may suspend or revoke any licensee's license if he finds that such licensee has violated any provision of this article, or if he finds the existence of any ground on which a license could have been refused, if such licensee were then applying for the same, and if the commissioner shall find that a licensee has willfully violated any provision of this article he shall revoke such licensee's license.

(b) Whenever any distributor fails or refuses to keep the bond required by section four of this article in full
force and effect, such distributor's license shall be auto-
matically suspended until such time as bond required by
said section four is furnished to the commissioner, at
which time such suspension shall be vacated.

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

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

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

(f) Such hearing and the administrative procedure
prior to, during and following the same shall be governed
by and in accordance with the provisions of article five,
chapter twenty-nine-a of this code in like manner as if
the provisions of article five were set forth in extenso in
this section.

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

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

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

§60-8-9. Severability.

If any article, section, subsection, provision, clause or
phrase of this chapter or the application thereof to any
person or circumstance is held unconstitutional or in-
valid, such unconstitutionality or invalidity shall not af-
fect other articles, sections, subsections, provisions, clauses
or phrases or applications of the chapter, and to this end
each and every article, section, subsection, provision,
clause and phrase of this chapter is declared to be sever-
able. The Legislature hereby declares that it would have
enacted the remaining articles, sections, subsections, pro-
visions, clauses and phrases of this chapter even if it had
known that any articles, sections, subsections, provisions,
clauses and phrases thereof would be declared to be un-
constitutional or invalid, and that it would have enacted
this chapter even if it had known that the application
thereof to any person or circumstance would be held to
be unconstitutional or invalid.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor