WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
SENATE BILL NO. 871

(By Mr. Baether, Mr. Parks, Mr. Shaw)

PASSED March 7, 1979

In Effect ninety days from Passage
ENROLLED
Senate Bill No. 371
(By MR. BOETTNER, MR. OATES and MR. SHAW)

[Passed March 7, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact sections four and five, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and nine-d, article three of said chapter; to amend and reenact sections two, three and fifteen, article four of said chapter; and to amend and reenact sections one and two, article six of said chapter, all relating to state control of alcoholic liquors generally; permitting the establishment and licensure of limited wineries in this state and defining the term "limited winery"; limiting the amount of annual production at such wineries; permitting the sale of wine produced by such wineries at wholesale or retail; levying a tax upon such sales; requiring a permit for such wineries and the requirements for and limitations of such permit; and establishing license fees for such wineries.

Be it enacted by the Legislature of West Virginia:
That sections four and five, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and nine-d, article three of said chapter be amended and reenacted; that sections two, three and fifteen, article four of said chapter be amended and reenacted; and that sections one and two, article six of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-4. Sales to be made by or through West Virginia alcohol beverage control commissioner; exceptions.

1. Alcoholic liquors shall be sold at wholesale and retail
2. in this state only by or through the West Virginia alcohol
beverage control commissioner or retail agencies established by him or any predecessor commissioners or commission, except as authorized by section two, article six and articles seven and eight of this chapter.

§60-1-5. Definitions.

1 For the purposes of this chapter:
2 "Alcohol" shall mean ethyl alcohol whatever its origin, and shall include synthetic ethyl alcohol but not de-natured alcohol.
3 "Beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more than three and two-tenths percent of alcohol by weight.
4 "Nonintoxicating beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more than three and two-tenths percent of alcohol by weight.
5 "Wine" shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.
6 "Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution, and includes brandy, rum, whiskey, cordials and gin.
7 "Alcoholic liquor" shall include alcohol, beer, wine, and spirits, and any liquid or solid containing more than three and two-tenths percent of alcohol by weight and capable of being used as a beverage.
8 "Original package" shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.
9 "Sale" shall mean any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by principal, proprietor, agent or employee.
10 "Selling" shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.
11 "Person" shall mean an individual, firm, partnership, corporation or voluntary association.
12 "Manufacture" means to distill, rectify, ferment, brew,
make, mix, concoct, process, blend, bottle, or fill an
original package with any alcoholic liquor.

"Manufacturer" shall mean any person engaged in the
manufacture of any alcoholic liquor, and among others
includes a distiller, a rectifier, a wine maker, and a
brewer.

"Brewery" shall mean an establishment where beer is
manufactured or in any way prepared.

"Winery" shall mean an establishment where wine is
manufactured or in any way prepared.

"Limited winery" shall mean an establishment where
wine is manufactured in this state exclusively from
grapes, other fruit or honey in an amount not exceeding
fifty thousand gallons each year.

"Distillery" shall mean an establishment where alco-
holic liquor other than wine or beer is manufactured or
in any way prepared.

"Public place" shall mean any place, building or con-
voyance to which the public has, or is permitted to have
access, including restaurants, soda fountains, and hotel
dining rooms and lobbies, and corridors of hotels, and
any highway, street, lane, park or place of public resort
or amusement.

"State liquor store" shall mean a store established
and operated by the commission under this chapter for
the sale of alcoholic liquor in the original package for
consumption off the premises.

"An agency" shall mean a drugstore, grocery store or
general store designated by the commission as a retail
distributor of alcoholic liquor for the West Virginia liquor
control commission.

"Department" shall mean the organization through
which the commission exercises powers imposed upon
it by this chapter.

"Commission" shall mean the West Virginia liquor con-
trol commission.

ARTICLE 3. SALES BY COMMISSIONERS.

§60-3-1. Sales at retail and wholesale.

1 The sale of alcoholic liquors at wholesale and retail
in this state is a state monopoly, except for sales made by
authority of section two, article six and articles seven
and eight of this chapter, unless prohibited by local elec-
tion pursuant to article eight of this chapter.

§60-3-9d. Tax on purchases of intoxicating liquors outside
corporate limits of municipalities; limitation; rate
of tax; collection and distribution.

For the purpose of providing financial assistance to and
for the use and benefit of the various counties and munici-
palities of this state, there is hereby levied a tax upon all
purchases outside the corporate limits of any municipality
of intoxicating liquor from state stores or other agencies
of the alcohol beverage control commissioner and of wine
from limited wineries, under provisions of section two,
article six, chapter sixty of this code, and of wine from
any person licensed to sell wine at retail under the
provisions of article eight, chapter sixty of this code. The
tax shall be three percent of the purchase price and shall
be added to and collected with the purchase price by the
commissioner or by the person so licensed to sell wine:
Provided, That no such tax shall be collected on the in-
toxicating liquors sold by or purchased from holders of a
license issued under the provisions of article seven of
this chapter.

All such tax collected within one mile of the corporate
limits of any municipality within the state shall be re-
mitted to such municipality; all other tax so collected
shall be remitted to the county wherein collected: Pro-
vided, That where the corporate limits of more than one
municipality be within one mile of the place of collection
of such tax, all such tax collected shall be divided equally
among each of said municipalities: Provided, however,
That such mile is measured by the most direct hard sur-
face road or access way usually and customarily used as
ingress and egress to the place of tax collection.

The West Virginia alcohol beverage control commis-
sioner by appropriate rules and regulations shall provide
for the collection of such tax upon all purchases outside
the corporate limits of any municipality of intoxicating
liquor from state stores or other agencies of the alcohol
beverage control commissioner, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. The tax commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases outside the corporate limits of any municipality of wine from limited wineries, under the provisions of section two, article six, chapter sixty of this code, and of wine from any person licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the counties and municipalities.

ARTICLE 4. LICENSES.

§60-4-2. Separate licenses for manufacture.

The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

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

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

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

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

(5) Industrial plants, in which alcohol is distilled, manufactured, or otherwise produced for scientific, chemical, mechanical or industrial purposes;

(6) Limited wineries, in which only wines shall be manufactured in this state and from which the wines so manufactured may be served or sold or both served and sold in accordance with the provisions of this chapter.

Licenses for manufacture shall authorize the manufacture and sale of alcoholic liquors as provided by this chapter.
§60-4-3. To whom licensed manufacturer may sell.

A person who is licensed to manufacture alcoholic liquors in this state may sell such liquors in this state only to the West Virginia alcohol beverage control commissioner and to wholesalers and retailers licensed as provided in this chapter. Provided, That a holder of a limited winery license may sell wines manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. A manufacturer may sell alcoholic liquors outside of the state for use or resale outside of the state.

§60-4-15. Amount of license fees.

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:

1. Distilleries, five hundred dollars;
2. Wineries, two hundred fifty dollars;
3. Breweries, two hundred fifty dollars;
4. Bottling plants, one hundred dollars;
5. Wholesale druggists, fifty dollars;
6. Institutions, ten dollars;
7. Industrial use, fifty dollars;
8. Industrial plants producing alcohol, two hundred fifty dollars;
9. Retail druggists, ten dollars;
10. Limited wineries, one hundred dollars.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

The provisions of this chapter shall not prevent:

1. A person from keeping and possessing alcoholic liquors in his residence for the personal use of himself, his family, his servants or his guests if such alcoholic liquors shall have been lawfully acquired by him;
2. A person, his family, or servants from giving or serving such alcoholic liquors to guests in said residence, when such gift or service is not for the purpose of evading the provisions of this chapter;
10 (3) The holder of a limited winery license for serving complimentary samples of its wine in moderate quantities for tasting at the winery premises.

§60-6-2. When lawful to manufacture and sell wine and cider.

1 The provisions of this chapter shall not prevent:
2 (1) A person from manufacturing wine at his residence for consumption at his residence as permitted by section one of this article;
3 (2) A person from manufacturing and selling unfermented cider;
4 (3) A person from manufacturing and selling cider made from apples produced by him within this state, to persons holding distillery licenses, but such manufacture and sale shall be under the supervision and regulation of the commission;
5 (4) A person from manufacturing and selling wine made from fruit produced by him within this state to persons holding winery licenses, but such manufacture and sale shall be under the supervision and regulation of the commission; or
6 (5) The holder of a limited winery license from selling wine produced by it directly to consumers or to any other person who is licensed under this chapter to sell wine either at wholesale or at retail.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J.B. Dillon Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. Ballenger
President of the Senate

J. E. Morse
Speaker House of Delegates

The within is disapproved this the 28th day of March, 1979.

Governor