

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

ENROLLED

SENATE BILL NO. 371

(By Mr. Boettner, Mr. Bates & Mr. Shaw.)

PASSED March 7, 1979

In Effect ninety days from Passage



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## Senate Bill No. 371

(By MR. BOETTNER, MR. OATES and MR. SHAW)

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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

3 beverage control commissioner or retail agencies estab-  
4 lished by him or any predecessor commissioners or com-  
5 mission, except as authorized by section two, article six  
6 and articles seven and eight of this chapter.

*Antiquities*  
*SB 250*

**§60-1-5. Definitions.**

1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin,  
3 and shall include synthetic ethyl alcohol but not de-  
4 natured alcohol.

5 "Beer" shall mean any beverage obtained by the  
6 fermentation of barley, malt, hops, or any other similar  
7 product or substitute, and containing more than three  
8 and two-tenths percent of alcohol by weight.

9 "Nonintoxicating beer" shall mean any beverage ob-  
10 tained by the fermentation of barley, malt, hops, or  
11 similar products or substitute, and containing not more  
12 than three and two-tenths percent of alcohol by weight.

13 "Wine" shall mean any alcoholic beverage obtained by  
14 the fermentation of the natural content of fruits, or other  
15 agricultural products, containing sugar.

16 "Spirits" shall mean any alcoholic beverage obtained  
17 by distillation and mixed with potable water and other  
18 substances in solution, and includes brandy, rum, whiskey,  
19 cordials and gin.

20 "Alcoholic liquor" shall include alcohol, beer, wine,  
21 and spirits, and any liquid or solid containing more than  
22 three and two-tenths percent of alcohol by weight and  
23 capable of being used as a beverage.

24 "Original package" shall mean any closed or sealed  
25 container or receptacle used for holding alcoholic liquor.

26 "Sale" shall mean any transfer, exchange, or barter in  
27 any manner or by any means, for a consideration, and  
28 shall include all sales made by principal, proprietor,  
29 agent or employee.

30 "Selling" shall include solicitation or receipt of orders;  
31 possession for sale; and possession with intent to sell.

32 "Person" shall mean an individual, firm, partnership,  
33 corporation or voluntary association.

34 "Manufacture" means to distill, rectify, ferment, brew,

35 make, mix, concoct, process, blend, bottle, or fill an  
36 original package with any alcoholic liquor.

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

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

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

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

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

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

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

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

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

69 "Commission" shall mean the West Virginia liquor con-  
70 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

2 in this state is a state monopoly, except for sales made by  
3 authority of section two, article six and articles seven  
4 and eight of this chapter, unless prohibited by local elec-  
5 tion pursuant to article eight of this chapter.

3 Antiquities  
SB 280

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

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

3 OK to SB 350

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

29 The West Virginia alcohol beverage control commis-  
30 sioner by appropriate rules and regulations shall provide  
31 for the collection of such tax upon all purchases outside  
32 the corporate limits of any municipality of intoxicating  
33 liquor from state stores or other agencies of the alcohol

34 beverage control commissioner, separation or proration  
35 of the same and distribution thereof to the respective  
36 counties and municipalities for which the same shall be  
37 collected. The tax commissioner by appropriate rules  
38 and regulations shall provide for the collection of such  
39 tax upon all purchases outside the corporate limits of  
40 any municipality of wine from limited wineries, under  
41 the provisions of section two, article six, chapter sixty of  
42 this code, and of wine from any person licensed to sell  
43 wine at retail under the provisions of article eight, chapter  
44 sixty of this code, separation or proration of the same and  
45 distribution thereof to the respective counties and municipi-  
46 palities for which the same shall be collected. Such rules  
47 and regulations shall provide that all such taxes shall be  
48 deposited with the state treasurer and distributed quarter-  
49 ly by the treasurer upon warrants of the auditor payable  
50 to the counties and municipalities.

*Amended  
SS 250*

#### ARTICLE 4. LICENSES.

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

1 The commission may grant licenses for the manufacture  
2 of alcoholic liquors. Separate licenses shall be issued to  
3 the following classes of manufacturing establishments:  
4 (1) Distilleries, in which only alcoholic liquors other  
5 than wine or beer shall be manufactured;  
6 (2) Wineries, in which only wines shall be manufac-  
7 tured;  
8 (3) Breweries, in which beer shall be manufactured;  
9 (4) Bottling plants, in which beer only shall be  
10 bottled;  
11 (5) Industrial plants, in which alcohol is distilled,  
12 manufactured, or otherwise produced for scientific, chem-  
13 ical, mechanical or industrial purposes;  
14 (6) Limited wineries, in which only wines shall be  
15 manufactured in this state and from which the wines so  
16 manufactured may be served or sold or both served and  
17 sold in accordance with the provisions of this chapter.  
18 Licenses for manufacture shall authorize the manu-  
19 facture and sale of alcoholic liquors as provided by th  
20 chapter.

**§60-4-3. To whom licensed manufacturer may sell.**

1 A person who is licensed to manufacture alcoholic  
2 liquors in this state may sell such liquors in this state  
3 only to the West Virginia alcohol beverage control com-  
4 missioner and to wholesalers and retailers licensed  
5 as provided in this chapter: *Provided*, That a holder  
6 of a limited winery license may sell wines manu-  
7 factured by it in this state in accordance with the  
8 provisions of section two, article six of this chapter. A  
9 manufacturer may sell alcoholic liquors outside of the  
10 state for use or resale outside of the state.

**§60-4-15. Amount of license fees.**

1 A person to whom a license is issued under the pro-  
2 visions of this chapter shall pay, annually, to the com-  
3 mission a license fee as follows, for:  
4 (1) Distilleries, five hundred dollars;  
5 (2) Wineries, two hundred fifty dollars;  
6 (3) Breweries, two hundred fifty dollars;  
7 (4) Bottling plants, one hundred dollars;  
8 (5) Wholesale druggists, fifty dollars;  
9 (6) Institutions, ten dollars;  
10 (7) Industrial use, fifty dollars;  
11 (8) Industrial plants producing alcohol, two hundred  
12 fifty dollars;  
13 (9) Retail druggists, ten dollars;  
14 (10) Limited wineries, one hundred dollars.

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

1 The provisions of this chapter shall not prevent:  
2 (1) A person from keeping and possessing alcoholic  
3 liquors in his residence for the personal use of himself,  
4 his family, his servants or his guests if such alcoholic  
5 liquors shall have been lawfully acquired by him;  
6 (2) A person, his family, or servants from giving or  
7 serving such alcoholic liquors to guests in said residence,  
8 when such gift or service is not for the purpose of evad-  
9 ing the provisions of this chapter;

10 (3) The holder of a limited winery license for serving  
11 complimentary samples of its wine in moderate quanti-  
12 ties 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  
3 for consumption at his residence as permitted by section  
4 one of this article;

5 (2) A person from manufacturing and selling un-  
6 fermented cider;

7 (3) A person from manufacturing and selling cid-  
8 made from apples produced by him within this state, to  
9 persons holding distillery licenses, but such manufacture  
10 and sale shall be under the supervision and regulation  
11 of the commission;

12 (4) A person from manufacturing and selling wine  
13 made from fruit produced by him within this state to  
14 persons holding winery licenses, but such manufacture  
15 and sale shall be under the supervision and regulation  
16 of the commission; or

17 (5) The holder of a limited winery license from selling  
18 wine produced by it directly to consumers or to any other  
19 person who is licensed under this chapter to sell wine  
20 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

Lawrence N. Thurston  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Sullivan Jr.  
Clerk of the Senate

W. Blankenship  
Clerk of the House of Delegates

W. T. Bullard  
President of the Senate

Chas. M. Secor Jr.  
Speaker House of Delegates

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

John D. Sledge  
Governor



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SECY. OF STATE