

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

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ENROLLED

Committee Substitute for

SENATE BILL NO. 362

(By Mr. *Baughman, Mr. Davis & Mr. Shaw*)

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PASSED March 8, 1980

In Effect from Passage



No. 362 - Veto

ENROLLED

COMMITTEE SUBSTITUTE FOR

Senate Bill No. 362

(MR. BOETTNER, MR. OATES and MR. SHAW, *original sponsors*)

[Passed March 8, 1980; in effect from passage.]

AN ACT to amend article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; to amend and reenact sections one and nine-d, article three of said chapter; to further amend said article three, by adding thereto a new section, designated section twenty-five; 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 farm wineries in this state and defining the term "farm winery"; limiting the amount of annual production at such wineries; limiting the amount of grapes, grape juice, fruit, fruit juice or honey imported; permitting the sale of wine produced by such wineries at wholesale or retail; levying a tax upon such sales; issuance of permit to import grapes, grape juice, fruit, fruit juice or honey in excess of established limit; requiring a license for the operation of such wineries and the requirements for the limitations of such license; establishing license fees for such wineries; and establishing regulation of hours of sale.

Be it enacted by the Legislature of West Virginia:

That article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a; that sections one and nine-d, article three of said chapter be

amended and reenacted; that said article three be further amended by adding thereto a new section, designated section twenty-five; 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.

§60-1-5a. Farm wineries; definitions; limitations.

1 For the purpose of this chapter: "Farm winery" shall
2 mean an establishment where wine not exceeding fifty
3 thousand gallons each year is manufactured exclusively
4 by natural fermentation from grapes, other fruit or honey,
5 twenty-five percent of such raw products being produced
6 by the owner of such farm winery on the premises of that
7 establishment, and no more than twenty-five percent of
8 such produce originating from any source outside this
9 state.

ARTICLE 3. SALES BY COMMISSIONER.

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

1 The sale of alcoholic liquors at wholesale and retail in
2 this state shall be a state monopoly, except for retail sales
3 made by authority of article six, section two and article
4 seven of this chapter. Alcoholic liquors shall be sold at
5 retail only through the state stores, agencies of the West
6 Virginia alcohol beverage control commissioner, and may
7 be sold by private clubs holding a license issued under the
8 provisions of article seven of this chapter.

9 The commissioner may sell such liquors at wholesale to
10 persons licensed to purchase at wholesale as provided in
11 this chapter and wine may be sold by farm wineries li-
12 censed under and subject to the provisions of this chapter.

§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 mu-
3 nicipalities of this state, there is hereby levied a tax upon
4 all purchases of intoxicating liquor from state stores,

5 other agencies of the alcohol beverage control commis-
 6 sioner or farm wineries, outside the corporate limits of
 7 any municipality. The tax shall be three percent of the
 8 purchase price and shall be added to and collected with
 9 the purchase price by the commissioner: *Provided*, That
 10 no such tax shall be collected on the intoxicating liquors
 11 sold by or purchased from holders of a license issued
 12 under the provisions of article seven of this chapter.

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

24 The commissioner by appropriate rules and regulations
 25 shall provide for the collection of such tax, separation or
 26 proration of the same and distribution thereof to the
 27 respective counties and municipalities for which the same
 28 shall be collected. Such rules and regulations shall pro-
 29 vide that all such taxes shall be deposited with the state
 30 treasurer and distributed quarterly by the treasurer upon
 31 warrants of the auditor payable to the counties and
 32 municipalities.

**§60-3-25. Permit for farm winery to import grapes, grape juice,
 fruit, fruit juice or honey in excess of estab-
 lished limits.**

1 Upon application by the holder of a farm winery license,
 2 filed with the West Virginia alcohol beverage commis-
 3 sioner, showing, due to unusual climatic or other con-
 4 ditions adversely affecting its ability to obtain from with-
 5 in this state seventy-five percent of the grapes, grape juice,
 6 other fruits or fruit juices or honey necessary to produce
 7 its wine, the commissioner may issue to the applicant a
 8 permit to import such products in an amount deemed
 9 necessary by the commissioner to allow such farm winery

10 to produce wine within the quota established by section
11 five-a, article one of this chapter. The permit issued under
12 this section shall not be effective for more than ninety
13 days. The burden of proof shall be upon the applicant to
14 show that grapes, grape juice, fruit, fruit juice or honey
15 of the type normally used by the licensee are not available
16 from any other source within the state of West Virginia,
17 and no application for a permit under this section shall
18 be considered by the commissioner unless it is accom-
19 panied by written findings by the West Virginia agricul-
20 ture commissioner in support thereof.

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 bottled;
10 (5) Industrial plants, in which alcohol is distilled, man-
11 ufactured, or otherwise produced for scientific, chemical,
12 mechanical, or industrial purposes; and
13 (6) Farm wineries, in which only wines shall be manu-
14 factured and from which the wine so manufactured may
15 be served or sold or both served and sold in accordance
16 with the provisions of this chapter.
17 Licenses for manufacture shall authorize the manufac-
18 ture and sale of alcoholic liquors as provided by this
19 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 only
3 to the West Virginia alcohol beverage control commis-
4 sioner, and to wholesalers and retailers licensed as pro-
5 vided in this chapter: *Provided*, That a holder of a farm

6 winery license may sell wines manufactured by it in this
 7 state in accordance with the provisions of section two,
 8 article six of this chapter. Hours of retail sale by a farm
 9 winery shall be subject to regulation by the commission.
 10 A manufacturer may sell alcoholic liquors outside of the
 11 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 provi-
 2 sions of this chapter shall pay, annually, to the commis-
 3 sion 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; and
- 14 (10) Farm wineries, fifty 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 evading
 9 the provisions of this chapter; and
- 10 (3) The holder of a farm winery license from serving
 11 complimentary samples of its wine in moderate quantities
 12 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 unfer-
6 mented cider;

7 (3) A person from manufacturing and selling cider
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 per-
14 sons holding winery licenses, but such manufacture and
15 sale shall be under the supervision and regulation of the
16 commission; and

17 (5) The holder of a farm 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

Blair C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Willis
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Chas. M. Lee Jr.
Speaker House of Delegates

The within disapproved this the 26
day of March, 1980.

James D. Ralston
Governor



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