

APPROVED AND SIGNED BY THE GOVERNOR

Date

Time

No: 935

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

— ● —

## ENROLLED

Com. Sub. for  
HOUSE BILL No. 935

(By Mr. Harman, 33rd Dist.)

— ● —

Passed March 5, 1981

In Effect Ninety Days From Passage



Reconsidered

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 935**

(By MR. HARMAN, 33rd Dist.)

[Passed March 5, 1981; in effect ninety days 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 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 mean  
2 an establishment where wine not exceeding fifty thousand  
3 gallons each year is manufactured exclusively by natural  
4 fermentation from grapes, other fruit or honey, twenty-five  
5 percent of such raw products being produced by the owner  
6 of such farm winery on the premises of that establishment,  
7 and no more than twenty-five percent of such produce origin-  
8 ating from any source outside this 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 this  
2 state shall be a state monopoly, except for retail sales made by  
3 authority of article six, section two and article seven of this  
4 chapter. Alcoholic liquors shall be sold at retail only through  
5 the state stores, agencies of the West Virginia alcohol beverage  
6 control commissioner, and may be sold by private clubs holding  
7 a license issued under the provisions of article seven of  
8 this chapter.

9 The commissioner may sell such liquors at wholesale to  
10 persons licensed to purchase at wholesale as provided in this  
11 chapter and wine may be sold by farm wineries licensed under  
12 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 munici-

3 palities of this state, there is hereby levied a tax upon all  
4 purchases of intoxicating liquor from state stores, other  
5 agencies of the alcohol beverage control commissioner or  
6 farm wineries, outside the corporate limits of any municipi-  
7 pality. The tax shall be three percent of the purchase price  
8 and shall be added to and collected with the purchase price  
9 by the commissioner: *Provided*, That no such tax shall be  
10 collected on the intoxicating liquors sold by or purchased  
11 from holders of a license issued under the provisions of article  
12 seven of this chapter.

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

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

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

1 Upon application by the holder of a farm winery license,  
2 filed with the West Virginia alcohol beverage control commis-  
3 sioner, showing, due to unusual climatic or other conditions ad-  
4 versely affecting its ability to obtain from within this state  
5 seventy-five percent of the grapes, grape juice, other fruits or  
6 fruit juices or honey necessary to produce its wine, the com-  
7 missioner may issue to the applicant a permit to import such

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

#### **ARTICLE 4. LICENSES.**

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

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

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

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

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

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

9 (5) Industrial plants, in which alcohol is distilled, manu-  
10 factured, or otherwise produced for scientific, chemical, me-  
11 chanical or industrial purposes; and

12 (6) Farm wineries, in which only wines shall be manu-  
13 factured and from which the wine so manufactured may be  
14 served or sold or both served and sold in accordance with the  
15 provisions of this chapter.

16 Licenses for manufacture shall authorize the manufacture  
17 and sale of alcoholic liquors as provided by this chapter.

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

1 A person who is licensed to manufacture alcoholic liquors  
2 in this state may sell such liquors in this state only to the West  
3 Virginia alcohol beverage control commissioner, and to whole-

4 salers and retailers licensed as provided in this chapter:  
5 *Provided*, That a holder of a farm winery license may sell  
6 wines manufactured by it in this state in accordance with the  
7 provisions of section two, article six of this chapter. Hours  
8 of retail sale by a farm winery shall be subject to regulation  
9 by the commissioner. A manufacturer may sell alcoholic liquors  
10 outside of the 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 provisions  
2 of this chapter shall pay, annually to the commissioner a  
3 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 fifty  
12 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 liquors  
3 in his residence for the personal use of himself, his family, his  
4 servants or his guests if such alcoholic liquors shall have been  
5 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, when  
8 such gift or service is not for the purpose of evading the  
9 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 for  
12 tasting at the winery premises.

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

1 The provision of this chapter shall not prevent:

2 (1) A person from manufacturing wine at his residence for  
3 consumption at his residence as permitted by section one of this  
4 article;

5 (2) A person from manufacturing and selling unfermented  
6 cider;

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

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

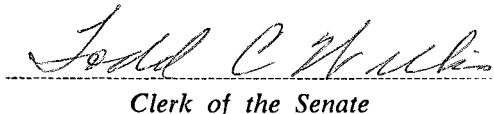
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

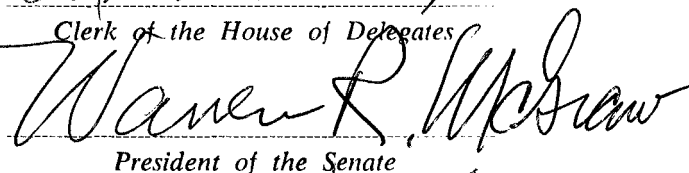
  
Chairman House Committee

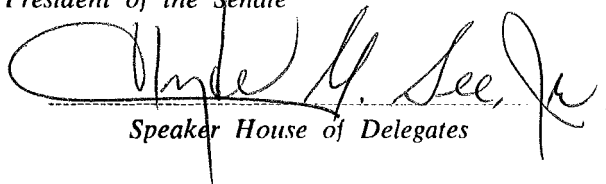
Originated in the House.

Takes effect ninety days from passage.

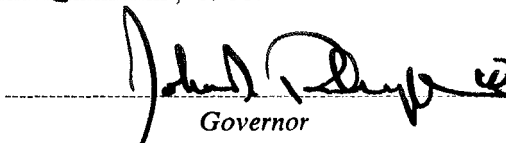
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is disapproved this the 16  
day of March, 1981.

  
Governor



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SECY. OF STATE