WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

Com. Sub. for

HOUSE BILL No. 935

(By Mr. Harman, 33rd Dist.)

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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 an establishment where wine not exceeding fifty thousand gallons each year is manufactured exclusively by natural fermentation from grapes, other fruit or honey, twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty-five percent of such produce originating 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 state shall be a state monopoly, except for retail sales made by authority of article six, section two and article seven of this chapter. Alcoholic liquors shall be sold at retail only through the state stores, agencies of the West Virginia alcohol beverage control commissioner, and may be sold by private clubs holding a license issued under the provisions of article seven of this chapter.

9 The commissioner may sell such liquors at wholesale to persons licensed to purchase at wholesale as provided in this chapter and wine may be sold by farm wineries licensed 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 for the use and benefit of the various counties and munici-
palities of this state, there is hereby levied a tax upon all purchases of intoxicating liquor from state stores, other agencies of the alcohol beverage control commissioner or farm wineries, outside the corporate limits of any municipality. The tax shall be three percent of the purchase price and shall be added to and collected with the purchase price by the commissioner: Provided, That no such tax shall be collected on the intoxicating 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 remitted to such municipality; all other tax so collected shall be remitted to the county wherein collected: Provided, 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 surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

The commissioner by appropriate rules and regulations shall provide for the collection of such tax, 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.

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

Upon application by the holder of a farm winery license, filed with the West Virginia alcohol beverage control com- missioner, showing, due to unusual climatic or other conditions adversely affecting its ability to obtain from within this state seventy-five percent of the grapes, grape juice, other fruits or fruit juices or honey necessary to produce its wine, the com- missioner may issue to the applicant a permit to import such
products in an amount deemed necessary by the commissioner to allow such farm winery to produce wine within the quota established by section five-a, article one of this chapter. The permit issued under this section shall not be effective for more than ninety days. The burden of proof shall be upon the applicant to show that grapes, grape juice, fruit, fruit juice or honey of the type normally used by the licensee are not available from any other source within the state of West Virginia, and no application for a permit under this section shall be considered by the commissioner unless it is accompanied by written findings by the West Virginia agriculture commissioner in support thereof.

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; and
6. Farm wineries, in which only wines shall be manufactured and from which the wine 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 whole-
salers and retailers licensed as provided in this chapter:

Provided, That a holder of a farm winery license may sell wines manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. Hours of retail sale by a farm winery shall be subject to regulation by the commissioner. 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 commissioner a license fee as follows, for:

1. (1) Distilleries, five hundred dollars;
2. (2) Wineries, two hundred fifty dollars;
3. (3) Breweries, two hundred fifty dollars;
4. (4) Bottling plants, one hundred dollars;
5. (5) Wholesale druggists, fifty dollars;
6. (6) Institutions, ten dollars;
7. (7) Industrial use, fifty dollars;
8. (8) Industrial plants producing alcohol, two hundred fifty dollars;
9. (9) Retail druggists, ten dollars; and
10. (10) Farm wineries, fifty 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. (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. (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; and
(3) The holder of a farm winery license from 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.

The provision of this chapter shall not prevent:

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

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

(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 commissioner;

(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 commissioner; and

(5) The holder of a farm 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.

Chairman Senate Committee

Tony E. Whitlow
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