WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Committee Substitute for
SENATE BILL NO. 668

(BY Mr. )

PASSED ........... Mark 12, 1983
In Effect ninety days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 668
(Mr. Tucker and Mr. Heck, original sponsors)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to repeal section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article, relating to the sale of wines and relating to providing that part III of this article shall apply to suppliers and distributors of wine; definition of supplier; changing the gallonage tax to liter tax; changing point of taxation from distributor to supplier; eliminating reports from those who supply distributors; requiring notice of assessment by certified mail; eliminating section on collection by distraint; providing for collection of taxes; forfeiture of bond by suppliers; and requiring bond of distributors.

Be it enacted by the Legislature of West Virginia:
That section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article be amended and reenacted to read as follows:
ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.
(a) The provisions of part II of this article shall have general application to the distribution and retail sale of wine in this state. The provisions of part III of this article shall relate solely to the distribution and the regulation of suppliers and distributors of such wines as may be permitted to be sold at retail pursuant to the provisions of this article. The provisions of part IV of this article shall relate solely to the retail sale of wine in grocery stores as the term "grocery store" is defined in this article and the retail sale of wine in wine specialty shops as defined in this article. In the event of any inconsistency of any provisions of part II and the provisions of either part III or part IV of this article, the provisions of either part III or part IV shall prevail to the extent of such inconsistency.
(b) In the event of any inconsistency between any of the provisions of this article and provisions of any other article of this chapter or of this code, the provisions of this article shall prevail to the extent of any such inconsistency.
(c) To the extent the provisions of this chapter exclusive of this article may be given application without creating an inconsistency with the provisions of this article, the provisions of this chapter, exclusive of this article, shall apply to the same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.
Unless the context in which used clearly requires a different meaning, as used in this article:
"Commissioner" means the West Virginia alcohol beverage control commissioner.
"Distributor" means any person whose principal place of business is within the state of West Virginia, and who is engaged in selling or distributing wine to retailers under authority of this article and actually maintains a warehouse in this state for the distribution of wine.
"Fortified wine" shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.
"Grocery store" means any retail establishment,
commonly known as a grocery store, supermarket or
delicatessen, where food, food products and supplies for the
table are sold for consumption off the premises with
average monthly sales (exclusive of sales of wine) of not less
than three thousand dollars and an average monthly
inventory (exclusive of inventory of wine) of not less than
three thousand dollars. The term “grocery store” shall also
include and mean a separate and segregated portion of any
other retail store which is dedicated solely to the sale of
food, food products and supplies for the table for
consumption off the premises with average monthly sales
with respect to such separate or segregated portion
(exclusive of sales of wine) of not less than three thousand
dollars and an average monthly inventory (exclusive of
inventory of wine) of not less than three thousand dollars.
“Licensee” means the holder of a license granted under
the provisions of this article.
“Retailer” means any person licensed to sell wine at retail
to the public at his established place of business for off-
premises consumption and who is licensed to do so under
authority of this article.
“Supplier” means any manufacturer, producer,
processor, distributor or supplier of wine who sells or offers
to sell or solicits or negotiates the sale of wine to any
licensed West Virginia distributor.
“Tax” includes within its meaning interest, additions to
tax and penalties.
“Taxpayer” means any person liable for any tax, interest,
additions to tax or penalty under the provisions of this
article and any person claiming a refund of tax.
“Varietal wine” means any wine labeled according to the
grape variety from which such wine is made.
“Vintage wine” or “vintage-dated wine” means wines
from which the grapes used to produce such wine are
harvested during a particular year or wines produced from
the grapes of a particular harvest in a particular region of
production.
“Wine” means any alcoholic beverage obtained by the
natural fermentation of the natural content of grapes, other
fruits or honey or other agricultural products containing
sugar and to which no alcohol has been added and shall
include table wine, and shall exclude fortified wine.
“Wine specialty shop” means a retailer who shall deal
principally in the sale of table wine, wine accessories and
food or foodstuffs normally associated with wine and who
shall maintain a representative number of such wines for
sale in his inventory which are designated by label as
varietal wine, vintage, generic and/or according to region of
production and the inventory shall contain not less than
fifteen percent vintage or vintage-dated wine by actual
bottle count.

§60-8-4. Liter tax.

The tax of one dollar per gallon and in like ratio on other
volumes heretofore levied and imposed on all wine sold by
distributors to retailers is continued through the thirtieth
day of April, one thousand nine hundred eighty-three.
There is also hereby levied and imposed on all wine in the
inventory of distributors at the end of business on the
thirtieth day of April, one thousand nine hundred eighty-
three, a tax of twenty-six and four hundred six-
thousandths cents per liter.

Before the sixteenth day of May, one thousand nine
hundred eighty-three, every distributor shall make a
written report under oath to the commissioner showing the
quantity, label and alcoholic content of wine sold or
purchased by the distributor during the preceding month,
and shall report the quantity of liters in inventory at the end
of business on the thirtieth day of April, one thousand nine
hundred eighty-three, and at that time shall either fully pay
the tax thereon imposed by this article on the wine sold
prior to the first day of May, one thousand nine hundred
eighty-three, and the wine in inventory at the end of
business on the thirtieth day of April, one thousand nine
hundred eighty-three, or shall pay such tax in three equal
consecutive payments due respectively on the sixteenth day
of May, the sixteenth day of June and the sixteenth day of
July, one thousand nine hundred eighty-three.

There is further hereby levied and imposed on all wine
sold after the thirtieth day of April, one thousand nine
hundred eighty-three, by suppliers to distributors, except
wine sold to the commissioner, a tax of twenty-six and four
hundred six-thousandths cents per liter.

Before the sixteenth day of June, one thousand nine
hundred eighty-three, and the sixteenth day of each month
thereafter, every supplier shall make a written report under
oath to the commissioner showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors during the preceding month, and at the same time shall pay the tax imposed by this article on the wine sold to the distributor during the preceding month.

The reports shall contain other information and be in the form the commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns.

No wine imported, sold or distributed in this state shall be subject to more than one gallonage or liter tax.

This section is to be effective upon date of passage.

§60-8-6. License or registration required for sale or shipment of wine.

Except as to the commissioner, no person may offer for sale or sell wine in this state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article. Every person, whether resident or nonresident in this state, who is engaged in or desires to engage in the sale or shipment of wine to a distributor for resale under this article shall, prior to engaging in such activities, register with the commissioner. If any such person violates the provisions of this article, he shall not be permitted to sell, ship or deliver any wine to a distributor or to the commissioner, or otherwise engage in the wine business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any distributor within this state to buy or receive wine from such person or to have any dealings with such person with respect thereto. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses under this article.

§60-8-11. Notice of assessment; petition for reassessment.

The commissioner shall give by certified mail to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (twenty days in the case of jeopardy assessments),
either personally or by certified mail, file with the commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for objections, said assessment shall become final and conclusive, not subject to administrative or judicial review, and the amount thereof shall be payable at the end of the thirty-day period (twenty days in the case of a jeopardy assessment). A petition for reassessment shall be deemed to be timely filed if the postmark date thereon is clearly within said thirty days (twenty days in case of jeopardy assessment) of receipt of said assessment by the taxpayer or is received within such period.

§60-8-15. Collection by action or suit.
1 The commissioner may collect any tax due and unpaid under the provisions of this article either by appropriate legal proceedings in Kanawha County or by actions at law or other appropriate remedy resulting in the forfeiture of bond for failure to pay taxes and fees prescribed by section four of this article.

§60-8-26. Forfeiture of bond.
1 On conviction of a violation of any provision of this article, upon the revocation of a license in accordance with section eighteen of this article or upon finding of failure of a taxpayer to pay all taxes prescribed by section four of this article, which conviction, revocation or finding has become final, the licensee, former licensee or company registered as a supplier, as the case may be, shall forfeit any bond required by section twenty-nine of this article. The penal sum of any bond forfeited shall forthwith be paid to the state treasurer and credited to the general revenue fund of this state. Such sum may be collected by an action at law or other appropriate remedy.

§60-8-29. Bond required of distributors.
1 Each applicant for a distributors license or each company registered as a supplier shall furnish at the time of application a bond with a corporate surety authorized to transact business in this state, payable to the state, and conditioned on the payment of all taxes and fees herein
prescribed and on the faithful performance of and
compliance with the provisions of this article.
8 The penal sum of the bond for distributors shall be ten
9 thousand dollars, and the penal sum of the bond for
10 suppliers shall be twenty-five thousand dollars.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 approved this the 29th day of March, 1883.

Governor