WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2522

(By Delegates Argento, DeLong, Manchin, Stemple, Pino, Amores and Webster)

Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-1-5b; to amend and reenact §60-4-2, §60-4-3 and §60-4-15 of said code; to amend said code by adding thereto a new section, designated §60-4-3a; and to amend and reenact §60-6-1 and §60-6-2 of said code, all relating to creating and licensing mini-distilleries; allowing the tasting and limited retail sales of liquor produced by a mini-distillery at the licensed premise; establishing requirements and limitations for licensees for sales and free samples of liquor products; requiring a portion of all retail sales to be distributed to certain retailers; and establishing a licensure fee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §60-1-5b; that §60-4-2,
§60-4-3 and §60-4-15 be amended and reenacted; that said code be amended by adding thereto a new section, designated §60-4-3a; and that §60-6-1 and §60-6-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5b. Mini-distilleries defined.

For the purpose of this chapter: “Mini-distillery” means an establishment where in any year no more than twenty thousand gallons of alcoholic liquor is manufactured with no less than twenty-five percent of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than twenty-five percent of raw agricultural products originating from any source outside this state: Provided, That the maximum allotted production amounts shall not exceed the annual incremental production limitations provided for pursuant to section three-a of this article: Provided, However, That a distillery licensed and operating as of the effective date of this section that applies for designation by the Commissioner as a mini-distillery is eligible to be licensed as a mini-distillery without compliance with the requirements for the percentage use of on-premises grown and in-state raw agricultural products.

ARTICLE 4. LICENSES.

§60-4-2. 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 is manufactured;
(2) Wineries, in which only wines are manufactured;

(3) Breweries, in which beer is manufactured;

(4) Bottling plants, in which beer only is bottled;

(5) Industrial plants, in which alcohol is distilled, manufactured, or otherwise produced for scientific, chemical, mechanical, or industrial purposes;

(6) Farm wineries, in which only wines are 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; and

(7) Mini-distilleries.

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

(a) A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner, and to wholesalers and retailers licensed as provided in this chapter: Provided, That a holder of a farm winery license may sell wines and a holder of a mini-distillery license may sell alcoholic liquors 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 or mini-distillery is subject to regulation by the Commissioner. The Commissioner may not promulgate any rule which prohibits the holder of a farm winery license from the advertising of a particular brand or brands of wine produced by it, and the price of the wine: Provided, however, That price may not be advertised in medium of electronic communication subject to the jurisdiction of the Federal Communications Commission. A manufacturer may sell alcoholic liquors outside of the state.
§60-4-3a. Special Mini-distillery license to manufacture and sell.

(a) *Sales of liquor*- An operator of a mini-distillery may offer liquor for retail sale to customers from the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any liquor on the premises of the mini-distillery.

(b) *Retail sales*- Every licensed mini-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six of article three-a of this chapter, and the provisions of article three and four of this chapter applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees*- The mini-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the Commissioner.

(d) *Payments to market zone retailers*- Each mini-distillery shall submit to the Commissioner ten percent of the gross sales price or each retail liquor sale for the value of all sales at the mini-distillery each month. This collection shall be distributed by the Commissioner, at least quarterly, to each market zone retailer located in the mini-distillery’s market zone, proportionate to each market zone retailer’s annual gross prior years pre-tax value sales.

(e) *Limitations on licensees*- No mini-distillery may sell more than three thousand gallons of product at the mini-distillery location the initial two years of licensure. The mini-distillery may increase sales at the mini-distillery location by two thousand gallons following the initial twenty-four month period of licensure, and may increase sales at the mini-distillery location each subsequent twenty-four month period by two
thousand gallons, not to exceed ten thousand gallons a year of total sales at the mini-distillery location. No licensed mini-
distillery may produce more than twenty thousand gallons per calendar year at the mini-distillery location. No more than one mini-distillery licence may be issued to a single person or entity.

§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, one thousand five hundred dollars;
2. (2) Wineries, one thousand five hundred 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;
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 may not prevent:

1. A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

2. A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

3. The holder of a farm winery license from serving complimentary samples of its wine in moderate quantities for tasting at the winery premises; and

4. The holder of a mini-distillery license from serving complimentary samples of its alcoholic liquor in moderate quantities for tasting at the distillery.

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

The provisions of this chapter may not prevent:

1. A person from manufacturing wine at his or her residence for consumption at his or her 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 or her within this state to persons holding distillery licenses, if the manufacture and sale is under the supervision and regulation of the Commissioner;

4. A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons
holding winery licenses, if the manufacture and sale is under
the supervision and regulation of the Commissioner;

(5) The holder of a farm winery license from selling wine
produced by it directly to consumers at the winery and at one
off-farm winery location or to any other person who is licensed
under this chapter to sell wine either at wholesale or at retail:
Provided, That the winery may ship wines from the farm
winery without the bonding requirements of a transporter:
Provided, however, That notwithstanding any other provisions
of law to the contrary, an individual or licensee in a state which
affords the wineries of this state equal reciprocal shipping
privileges may ship for personal use and not for resale not more
than two cases of wine per month to any adult resident in this
state. For purposes of this subdivision, “wine” includes dessert
wines manufactured exclusively by natural fermentation and
port, sherry and Madeira wines having an alcoholic content of
not more than twenty-two percent alcohol by volume and which
have been matured in wooden barrels or casks; and

(6) The holder of a mini-distillery license from selling
alcoholic liquor for off premises consumption sold retail at the
distillery.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ approved this the ______ day of ______, 2005.
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 10:15 a.m.