

H. B. 2943

(By Delegate Skinner)

[Introduced March 14, 2013; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

A BILL to amend and reenact §60-4-3 and §60-4-3a of the Code of
West Virginia, 1931, as amended; to amend and reenact §60-6-2
of said code; and to amend and reenact §60-7-11 of said code,
all relating to providing that the hours of a private club
operating on the premises of a distillery that produces less
than 50,000 gallons of alcoholic liquor per year or a
mini-distillery shall be the same as any other private club;
authorizing sales of alcoholic liquor, other than in sealed
packages, for consumption on the premises of a distillery that
produces less than 50,000 gallons of alcoholic liquor per year
or a mini-distillery which also holds a private club license;
and exempting alcoholic liquor that was manufactured on the
premises of the distillery that produces less than 50,000
gallons of alcoholic liquor per year or a mini-distillery from
the requirement that licensees must purchase alcoholic liquors

1 from or through the commissioner or a retail licensee.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §60-4-3 and §60-4-3a of the Code of West Virginia, 1931,
4 as amended, be amended and reenacted; that §60-6-2 of said code be
5 amended and reenacted; and that §60-7-11 of said code be amended
6 and reenacted, all to read as follows:

7 **ARTICLE 4. LICENSES.**

8 **§60-4-3. To whom licensed manufacturer may sell.**

9 A person who is licensed to manufacture alcoholic liquors in
10 this state may sell liquors in this state only to the West Virginia
11 Alcohol Beverage Control Commissioner and to wholesalers and
12 retailers licensed as provided in this chapter: *Provided*, That a
13 holder of a winery or a farm winery license may sell wines and a
14 holder of a distillery or a mini-distillery license may sell
15 alcoholic liquors manufactured by it in this state in accordance
16 with the provisions of section two, article six of this chapter.
17 Hours of retail sale by a winery or a farm winery or distillery or
18 a mini-distillery are subject to regulation by the commissioner:
19 *Provided*, That the hours of a private club operating on the
20 premises of a distillery or mini-distillery shall be the same as
21 any private club licensed under article seven, chapter sixty of
22 this code. A winery, distillery, farm winery or mini-distillery
23 may sell and ship alcoholic liquors outside of the state subject to
24 provisions of this chapter.

1 **§60-4-3a. Distillery and mini-distillery license to manufacture**
2 **and sell.**

3 (a) *Sales of liquor.* -- An operator of a distillery or a
4 mini-distillery may offer liquor for retail sale to customers from
5 the distillery or the mini-distillery for consumption off premises
6 only. Except for free complimentary samples offered pursuant to
7 section one, article six of this chapter, or sales for consumption
8 offered under a valid private club license pursuant to article
9 seven, chapter sixty of this code, customers are prohibited from
10 consuming any liquor on the premises of the distillery or the
11 mini-distillery. Distilleries that produce 50,000 or more gallons
12 of alcoholic liquor per year may not hold a private club license.

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

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

24 (d) *Payments to market zone retailers.* -- Each distillery or

1 mini-distillery shall submit to the commissioner ten percent of the
2 gross sales price or each retail liquor sale for the value of all
3 sales at the distillery or the mini-distillery each month. This
4 collection shall be distributed by the commissioner, at least
5 quarterly, to each market zone retailer located in the distillery
6 or mini-distillery's market zone, proportionate to each market zone
7 retailer's annual gross prior years pretax value sales.

8 (e) *Limitations on licensees.* -- No distillery or
9 mini-distillery may sell more than three thousand gallons of
10 product at the distillery or mini-distillery location the initial
11 two years of licensure. The distillery or mini-distillery may
12 increase sales at the distillery or mini-distillery location by two
13 thousand gallons following the initial twenty-four month period of
14 licensure and may increase sales at the distillery or
15 mini-distillery location each subsequent twenty-four month period
16 by two thousand gallons, not to exceed ten thousand gallons a year
17 of total sales at the distillery or mini-distillery location. No
18 licensed mini-distillery may produce more than twenty thousand
19 gallons per calendar year at the mini-distillery location. No more
20 than one distillery or mini-distillery license may be issued to a
21 single person or entity and no person may hold both a distillery
22 and a mini-distillery license.

23 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

24 **§60-6-2. When lawful to manufacture and sell wine and cider.**

1 The provisions of this chapter may not prevent:

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

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

6 (3) A person from manufacturing and selling cider made from
7 apples produced by him or her within this state to persons holding
8 distillery licenses, if the manufacture and sale is under the
9 supervision and regulation of the commissioner;

10 (4) A person from manufacturing and selling wine made from
11 fruit produced by him or her within this state to persons holding
12 winery licenses, if the manufacture and sale is under the
13 supervision and regulation of the commissioner;

14 (5) The holder of a winery or a farm winery license from
15 selling wine for off-premises consumption sold at retail at the
16 winery or the farm winery, as provided in section four, article
17 three-b of this chapter, or for any other person who is licensed
18 under this chapter to sell wine as a wine supplier or distributor;
19 and

20 (6) The holder of a distillery or a mini-distillery license
21 from selling alcoholic liquor for off-premises consumption sold at
22 retail at the distillery or the mini-distillery, as provided in
23 section four, article three-a of this chapter; and

24 (7) The holder of a distillery or mini-distillery license from

1 selling alcoholic liquor, other than in sealed packages, for
2 consumption on the distillery or the mini-distillery premises, if
3 the holder of the distillery or mini-distillery license produces
4 less than 50,000 gallons of alcoholic liquor per year and also
5 holds a valid private club license for the premises under article
6 seven, chapter sixty of this code.

7 **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

8 **§60-7-11. Licensee must purchase alcoholic liquors from or**
9 **through commissioner or retail licensee; exceptions.**

10 (a) (1) All licensees shall purchase all alcoholic liquors
11 sold by them from the West Virginia Alcohol Beverage Control
12 Commissioner at prices established by the commissioner for sales of
13 the alcoholic liquors to the public generally or from any retail
14 licensee licensed under the provisions of article three-a of this
15 chapter, except that the licensees may purchase those wines
16 permitted to be sold at retail pursuant to article eight of this
17 chapter from those distributors licensed pursuant to said article
18 at the same prices the distributors sell the wines to retailers
19 licensed pursuant to said article, and distilleries or
20 mini-distilleries licensed under article four, chapter sixty of
21 this code and under this article may sell, if otherwise authorized,
22 alcoholic liquor, other than in sealed packages, for consumption on
23 the distillery or the mini-distillery premises, if the alcoholic
24 liquor was manufactured on those premises.

1 (2) A licensee may by contract approved by the commissioner
2 receive deliveries of alcoholic liquor from a retail liquor store,
3 and the provisions of sections twelve and thirteen, article six of
4 this chapter shall not apply to the transportation of that
5 alcoholic liquor.

6 (b) In all reports filed under section sixteen, article
7 fifteen, chapter eleven of this code, retail licensees licensed
8 under the provisions of article three-a of this chapter shall
9 separately identify the amount of sales tax on sales of liquor to
10 licensees in the manner required by the Tax Commissioner.

11 (c) Notwithstanding the provisions of section thirty, article
12 fifteen, chapter eleven of this code to the contrary, the amount of
13 the sales taxes collected by the Tax Commissioner shall be
14 deposited in a revolving fund account in the State Treasurer's
15 office, designated the "Drunk Driving Prevention Fund", and
16 administered by the commission on drunk driving prevention, subject
17 to appropriations by the Legislature.

NOTE: The purpose of this bill is to allow the holder of a distillery or mini-distillery license who produces 50,000 gallons or less of alcoholic liquor to serve alcohol for consumption on the premises of the distillery or mini-distillery, during the hours that a private club is permitted to serve alcohol for consumption, if the holder of the distillery or mini-distillery license also holds a a valid private club license for the premises, and to exempt such distilleries or mini-distilleries from the requirement to purchase alcoholic liquors from or through the commissioner or a retail licensee.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.