

Senate Bill No. 574

(By Senators Trump, Miller, Woelfel,
Snyder, Beach, Gaunch, Karnes,
D. Hall, Kirkendoll and Williams)

[Originating in the Committee on
the Judiciary;
reported February 26, 2015.]

A BILL to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-3 and §60-4-3a of said code, all relating to sales of liquor by distilleries and mini-distilleries.

Be it enacted by the Legislature of West Virginia:

That §60-3A-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-4-3 and §60-4-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to
2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according
3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor
4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to section
5 three, article four of this chapter.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General
7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the
8 average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be
9 deposited into the General Revenue Fund in the manner provided in section seventeen, article three

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1 of this chapter.

2 (c) ~~The~~ Notwithstanding any provision of this code to the contrary, the commissioner shall
3 specify the maximum wholesale markup percentage which may be applied to the prices paid by the
4 commissioner for all liquor, other than wine, in order to determine the prices at which all liquor,
5 other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than
6 wine, for resale in this state only from the commissioner, and the provisions of sections twelve and
7 thirteen, article six of this chapter shall not apply to the transportation of the liquor: *Provided*, That
8 a retail licensee shall purchase wine from a wine distributor who is duly licensed under article eight
9 of this chapter. All liquor, other than wine, purchased by retail licensees shall be stored in the state
10 at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the
11 commissioner, in his or her discretion, may upon written request permit a retail licensee to store
12 liquor at a site other than the retail outlet or outlets.

13 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds
14 transfer which shall be initiated by the commissioner on the business day following the retail
15 licensees order or by money order, certified check or cashier's check which shall be received by the
16 commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: *Provided*,
17 That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with
18 surety acceptable to the commissioner from a financial institution acceptable to the commissioner
19 guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in
20 an amount up to the amount of the letter of credit.

21 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of article
22 seven of this chapter at less than one hundred ten percent of the retail licensee's cost as defined in
23 section six, article eleven-a, chapter forty-seven of this code.

24 (2) A retail licensee may not sell liquor to the general public at less than one hundred ten
25 percent of the retail licensee's cost as defined in section six, article eleven-a, chapter forty-seven of

1 this code.

2 **ARTICLE 4. LICENSES.**

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

4 A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this
5 state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and
6 retailers licensed as provided in this chapter: *Provided*, That a holder of a winery or a farm winery
7 license may sell wines and a holder of a distillery or a mini-distillery license may sell alcoholic
8 liquors manufactured by it in this state in accordance with the provisions of section three-a of this
9 article and section two, article six of this chapter. Hours of retail sale by a winery or a farm winery
10 or distillery or a mini-distillery are subject to regulation by the commissioner. A winery, distillery,
11 farm winery or mini-distillery may sell and ship alcoholic liquors outside of the state subject to
12 provisions of this chapter.

13 **§60-4-3a. Distillery and mini-distillery license to manufacture and sell.**

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

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

22 (c) *Payment of taxes and fees.* -- The distillery or mini-distillery shall pay all taxes and fees
23 required of licensed retailers and meet applicable licensing provisions as required by this chapter and
24 by rule of the commissioner, except for payments of the wholesale markup percentage and the
25 handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers

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1 from the distillery or the mini-distillery for off-premises consumption shall be subject of a five
2 percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner:
3 Provided, however, That no liquor sold by the distillery or mini-distillery shall be priced less than
4 the price set by the commissioner pursuant to section seventeen, article three-a of this chapter.

5 (d) *Payments to market zone retailers.* -- Each distillery or mini-distillery shall submit to
6 the commissioner ~~ten~~ two percent of the gross sales price or each retail liquor sale for the value
7 of all sales at the distillery or the mini-distillery each month. This collection shall be distributed
8 by the commissioner, at least quarterly, to each market zone retailer located in the distillery or
9 mini-distillery's market zone, proportionate to each market zone retailer's annual gross prior years
10 pretax value sales. The maximum amount of market zone payments that a distillery or mini-
11 distillery shall be required to submit to the commissioner is \$15,000 per annum.

12 (e) *Limitations on licensees.* -- No distillery or mini-distillery may sell more than three
13 thousand gallons of product at the distillery or mini-distillery location the initial two years of
14 licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery
15 location by two thousand gallons following the initial 24-month period of licensure and may
16 increase sales at the distillery or mini-distillery location each subsequent 24-month period by two
17 thousand gallons, not to exceed ten thousand gallons a year of total sales at the distillery or mini-
18 distillery location. No licensed mini-distillery may produce more than ~~twenty~~ fifty thousand
19 gallons per calendar year at the mini-distillery location. No more than one distillery or mini-
20 distillery license may be issued to a single person or entity and no person may hold both a
21 distillery and a mini-distillery license.