

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015



ENROLLED

Senate Bill No. 574

(BY SENATORS TRUMP, MILLER, WOELFEL, SNYDER, BEACH,
GAUNCH, KARNES, D. HALL, KIRKENDOLL AND WILLIAMS)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT 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 generally; setting fees; reducing buyback price; setting fees to be paid to the Alcohol Beverage Control Commissioner on sales of liquor to customers from a distillery or a mini-distillery for off-premises consumption; providing that no liquor sold by a distillery or mini-distillery shall be priced less than the price set by the commissioner; setting a maximum for market zone payments; and raising the production level allowable for 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
2 sale of liquor, other than wine, to retail licensees. The
3 commissioner shall sell liquor, other than wine, to retail
4 licensees according to a uniform pricing schedule. The
5 commissioner shall obtain, if possible, upon request, any
6 liquor requested by a retail licensee and those permitted to
7 manufacture and sell liquor pursuant to section three, article
8 four of this chapter.

9 (b) Wholesale prices shall be established in order to yield
10 a net profit for the General Revenue Fund of not less than
11 \$6,500,000 annually on an annual volume of business equal
12 to the average for the past three years. The net revenue
13 derived from the sale of alcoholic liquors shall be deposited
14 into the General Revenue Fund in the manner provided in
15 section seventeen, article three of this chapter.

16 (c) Notwithstanding any provision of this code to the
17 contrary, the commissioner shall specify the maximum
18 wholesale markup percentage which may be applied to the
19 prices paid by the commissioner for all liquor, other than
20 wine, in order to determine the prices at which all liquor,
21 other than wine, will be sold to retail licensees. A retail
22 licensee shall purchase all liquor, other than wine, for resale
23 in this state only from the commissioner, and the provisions
24 of sections twelve and thirteen, article six of this chapter shall
25 not apply to the transportation of the liquor: *Provided*, That
26 a retail licensee shall purchase wine from a wine distributor
27 who is duly licensed under article eight of this chapter. All
28 liquor, other than wine, purchased by retail licensees shall be
29 stored in the state at the retail outlet or outlets operated by the
30 retail licensee: *Provided, however*, That the commissioner,
31 in his or her discretion, may upon written request permit a
32 retail licensee to store liquor at a site other than the retail
33 outlet or outlets.

34 (d) The sale of liquor by the commissioner to retail
35 licensees shall be paid by electronic funds transfer which
36 shall be initiated by the commissioner on the business day
37 following the retail licensees order or by money order,
38 certified check or cashier's check which shall be received by
39 the commissioner at least twenty-four hours prior to the
40 shipping of the alcoholic liquors: *Provided*, That if a retail
41 licensee posts with the commissioner an irrevocable letter of
42 credit or bond with surety acceptable to the commissioner
43 from a financial institution acceptable to the commissioner
44 guaranteeing payment of checks, then the commissioner may
45 accept the retail licensee's checks in an amount up to the
46 amount of the letter of credit.

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

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

ARTICLE 4. LICENSES.

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

1 A person who is licensed to manufacture alcoholic
2 liquors in this state may sell liquors in this state only to the
3 West Virginia Alcohol Beverage Control Commissioner and
4 to wholesalers and retailers licensed as provided in this
5 chapter: *Provided*, That a holder of a winery or a farm
6 winery license may sell wines and a holder of a distillery or
7 a mini-distillery license may sell alcoholic liquors
8 manufactured by it in this state in accordance with the

9 provisions of section three-a of this article and section two,
10 article six of this chapter. Hours of retail sale by a winery or
11 a farm winery or distillery or a mini-distillery are subject to
12 regulation by the commissioner. A winery, distillery, farm
13 winery or mini-distillery may sell and ship alcoholic liquors
14 outside of the state subject to provisions of this chapter.

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

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

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

15 (c) *Payment of taxes and fees.* – The distillery or mini-
16 distillery shall pay all taxes and fees required of licensed
17 retailers and meet applicable licensing provisions as required
18 by this chapter and by rule of the commissioner, except for
19 payments of the wholesale markup percentage and the
20 handling fee provided by rule of the commissioner:
21 *Provided*, That all liquor for sale to customers from the
22 distillery or the mini-distillery for off-premises consumption
23 shall be subject of a five percent wholesale markup fee and
24 an 80 cents per case bailment fee to be paid to the
25 commissioner: *Provided, however*, That no liquor sold by the
26 distillery or mini-distillery shall be priced less than the price

27 set by the commissioner pursuant to section seventeen, article
28 three-a of this chapter.

29 (d) *Payments to market zone retailers.* – Each distillery
30 or mini-distillery shall submit to the commissioner two
31 percent of the gross sales price of each retail liquor sale for
32 the value of all sales at the distillery or the mini-distillery
33 each month. This collection shall be distributed by the
34 commissioner, at least quarterly, to each market zone retailer
35 located in the distillery or mini-distillery’s market zone,
36 proportionate to each market zone retailer’s annual gross
37 prior years pretax value sales. The maximum amount of
38 market zone payments that a distillery or mini-distillery shall
39 be required to submit to the commissioner is \$15,000 per
40 annum.

41 (e) *Limitations on licensees.* – No distillery or mini-
42 distillery may sell more than three thousand gallons of
43 product at the distillery or mini-distillery location the initial
44 two years of licensure. The distillery or mini-distillery may
45 increase sales at the distillery or mini-distillery location by
46 two thousand gallons following the initial 24-month period of
47 licensure and may increase sales at the distillery or mini-
48 distillery location each subsequent 24-month period by two
49 thousand gallons, not to exceed ten thousand gallons a year
50 of total sales at the distillery or mini-distillery location. No
51 licensed mini-distillery may produce more than fifty thousand
52 gallons per calendar year at the mini-distillery location. No
53 more than one distillery or mini-distillery license may be
54 issued to a single person or entity and no person may hold
55 both a distillery and a mini-distillery license.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

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Governor