

WEST VIRGINIA LEGISLATURE

Regular Session, 2003



ENROLLED

SENATE BILL NO. 112

(By Senator Sharpe, et al)



PASSED March 6, 2003

In Effect from **Passage**

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 112

(BY SENATORS SHARPE, EDGELL, PREZIOSO, ROSS,
MINARD AND WHITE)

[Passed March 6, 2003; in effect from passage.]

AN ACT to amend and reenact section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six of said chapter; and to amend and reenact section two, article eight of said chapter, all relating generally to beverages containing alcohol; allowing farm wineries to produce wine from other agricultural products containing sugar; allowing farm wineries to manufacture, serve and sell dessert, port, sherry and Madeira wines; and excluding dessert wine produced by farm wineries from the definition of fortified wine.

Be it enacted by the Legislature of West Virginia:

That section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six of said chapter be amended and reenacted; and that section two,

article eight of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 (a) For the purpose of this chapter: "Farm winery"
2 means an establishment where in any year fifty thousand
3 gallons or less of wine is manufactured exclusively by
4 natural fermentation from grapes, other fruits or honey or
5 other agricultural products containing sugar, with
6 twenty-five percent of such raw products being produced
7 by the owner of such farm winery on the premises of that
8 establishment and no more than twenty-five percent of
9 such produce originating from any source outside this
10 state.

11 (b) Notwithstanding the provisions of subsection (a) of
12 this section, a farm winery may include one off-farm
13 location. The owner of a farm winery may provide to the
14 commissioner evidence, accompanied by written findings
15 by the West Virginia agriculture commissioner in support
16 thereof, that the owner has planted on the premises of the
17 farm winery young nonbearing fruit plants. The commis-
18 sioner may grant permission for one off-farm location in
19 an amount equal to that reasonably expected to be pro-
20 duced when the nonbearing fruit plants planted on the
21 farm winery come into full production. The length of time
22 of the permission to use an off-farm location shall be
23 determined by the commissioner after consultation with
24 the agriculture commissioner.

25 (c) For purposes of this definition and when used in this
26 chapter to refer to the product of a farm winery or the
27 product of the holder of a farm winery license, "wine"
28 includes dessert wines manufactured exclusively by
29 natural fermentation and port, sherry and Madeira wines
30 having an alcoholic content of not more than twenty-two
31 percent alcohol by volume and which have been matured
32 in wooden barrels or casks.

ARTICLE 6. MISCELLANEOUS PROVISIONS.**§60-6-2. When lawful to manufacture and sell wine and cider.**

1 The provisions of this chapter shall not prevent:

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

5 (2) A person from manufacturing and selling unfer-
6 mented cider;

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

12 (4) A person from manufacturing and selling wine made
13 from fruit produced by him or her within this state to
14 persons holding winery licenses, but the manufacture and
15 sale shall be under the supervision and regulation of the
16 commissioner; and

17 (5) The holder of a farm winery license from selling wine
18 produced by it directly to consumers at the winery and at
19 one off-farm winery location or to any other person who is
20 licensed under this chapter to sell wine either at wholesale
21 or at retail: *Provided, That* the winery may ship wines
22 from the farm winery without the bonding requirements of
23 a transporter: *Provided, however, That* notwithstanding
24 any other provisions of law to the contrary, an individual
25 or licensee in a state which affords the wineries of this
26 state equal reciprocal shipping privileges may ship for
27 personal use and not for resale not more than two cases of
28 wine per month to any adult resident in this state. For
29 purposes of this subdivision, "wine" includes dessert wines
30 manufactured exclusively by natural fermentation and
31 port, sherry and Madeira wines having an alcoholic
32 content of not more than twenty-two percent alcohol by

33 volume and which have been matured in wooden barrels
34 or casks.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 "Commissioner" or "commission" means the West
4 Virginia alcohol beverage control commissioner.

5 "Distributor" means any person whose principal place
6 of business is within the state of West Virginia and who is
7 engaged in selling or distributing wine to retailers or
8 private wine restaurants and selling or distributing port,
9 sherry and Madeira wines to wine specialty shops under
10 authority of this article and actually maintains a ware-
11 house in this state for the distribution of wine.

12 "Fortified wine" shall mean any wine to which brandy
13 or other alcohol has been added and shall include dessert
14 wines which are not fortified: *Provided*, That a dessert
15 wine manufactured exclusively by natural fermentation
16 and having an alcoholic content of not more than twenty-
17 two percent alcohol by volume and which has been
18 matured in wooden barrels or casks and manufactured,
19 served or sold by a farm winery is not a fortified wine.

20 "Grocery store" means any retail establishment, com-
21 monly known as a grocery store, supermarket, delicates-
22 sen, caterer or party supply store, where food, food
23 products and supplies for the table are sold for consump-
24 tion off the premises with average monthly sales (exclusive
25 of sales of wine) of not less than five hundred dollars and
26 an average monthly inventory (exclusive of inventory of
27 wine) of not less than three thousand dollars. The term
28 "grocery store" shall also include and mean a separate and
29 segregated portion of any other retail store which is
30 dedicated solely to the sale of food, food products and
31 supplies for the table for consumption off the premises

32 with average monthly sales with respect to such separate
33 or segregated portion (exclusive of sales of wine) of not
34 less than three thousand dollars and an average monthly
35 inventory (exclusive of inventory of wine) of not less than
36 three thousand dollars.

37 “Licensee” means the holder of a license granted under
38 the provisions of this article.

39 “Private wine restaurant” means a restaurant which: (1)
40 Is a partnership, limited partnership, corporation, unincor-
41 porated association or other business entity which has as
42 its principal purpose the business of serving meals on its
43 premises to its members and their guests; (2) is licensed
44 under the provisions of this article as to all of its premises
45 or as to a separate segregated portion of its premises to
46 serve wine to its members and their guests when such sale
47 accompanies the serving of food or meals; and (3) admits
48 only duly elected and approved dues paying members and
49 their guests while in the company of a member, and does
50 not admit the general public.

51 “Retailer” means any person licensed to sell wine at
52 retail to the public at his or her established place of
53 business for off-premises consumption and who is licensed
54 to do so under authority of this article.

55 “Supplier” means any manufacturer, producer, proces-
56 sor, distributor or supplier of wine who sells or offers to
57 sell or solicits or negotiates the sale of wine to any licensed
58 West Virginia distributor.

59 “Tax” includes within its meaning interest, additions to
60 tax and penalties.

61 “Taxpayer” means any person liable for any tax, inter-
62 est, additions to tax or penalty under the provisions of this
63 article and any person claiming a refund of tax.

64 “Varietal wine” means any wine labeled according to the
65 grape variety from which such wine is made.

66 "Vintage wine" or "vintage-dated wine" means wines
67 from which the grapes used to produce such wine are
68 harvested during a particular year or wines produced from
69 the grapes of a particular harvest in a particular region of
70 production.

71 "Wine" means any alcoholic beverage obtained by the
72 natural fermentation of the natural content of grapes,
73 other fruits or honey or other agricultural products
74 containing sugar and to which no alcohol has been added
75 and shall include table wine, and shall exclude fortified
76 wine and shall also exclude any product defined as or
77 embraced within the definition of nonintoxicating beer
78 under the provisions of article sixteen, chapter eleven of
79 this code: *Provided*, That "wine" shall include dessert
80 wines manufactured exclusively by natural fermentation,
81 and port, sherry and Madeira wines having an alcoholic
82 content of not more than twenty-two percent alcohol by
83 volume and which have been matured in wooden barrels
84 or casks if produced by a farm winery as defined in section
85 five-a, article one of this chapter.

86 "Wine specialty shop" means a retailer who shall deal
87 principally in the sale of table wine, certain fortified
88 wines, wine accessories and food or foodstuffs normally
89 associated with wine and: (1) Who shall maintain a
90 representative number of such wines for sale in his or her
91 inventory which are designated by label as varietal wine,
92 vintage, generic and/or according to region of production
93 and the inventory shall contain not less than fifteen
94 percent vintage or vintage-dated wine by actual bottle
95 count; and (2) who, any other provisions of this code to the
96 contrary notwithstanding, may maintain an inventory of
97 port, sherry and Madeira wines having an alcoholic
98 content of not more than twenty-two percent alcohol by
99 volume and which have been matured in wooden barrels
100 or casks.

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

[Signature]
.....
~~Chairman Senate Committee~~
~~Member~~

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is* approved this the *17th*
Day of *March*, 2003.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/13/03

Time 8:50 am