

FILED

2005 MAY -4 P 11: 05

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

FILED

2005 MAY -4 P 11: 05

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 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.

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

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

1 The Commission may grant licenses for the manufacture of
2 alcoholic liquors. Separate licenses shall be issued to the
3 following classes of manufacturing establishments:

- 4 (1) Distilleries, in which only alcoholic liquors other than
5 wine or beer is manufactured;

- 6 (2) Wineries, in which only wines are manufactured;
- 7 (3) Breweries, in which beer is manufactured;
- 8 (4) Bottling plants, in which beer only is bottled;
- 9 (5) Industrial plants, in which alcohol is distilled, manufac-
10 tured, or otherwise produced for scientific, chemical, mechani-
11 cal, or industrial purposes;
- 12 (6) Farm wineries, in which only wines are manufactured
13 and from which the wine so manufactured may be served or
14 sold or both served and sold in accordance with the provisions
15 of this chapter; and
- 16 (7) Mini-distilleries.

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

1 (a) 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 to
4 wholesalers and retailers licensed as provided in this chapter:
5 *Provided*, That a holder of a farm winery license may sell wines
6 and a holder of a mini-distillery license may sell alcoholic
7 liquors manufactured by it in this state in accordance with the
8 provisions of section two, article six of this chapter. Hours of
9 retail sale by a farm winery or mini-distillery is subject to
10 regulation by the Commissioner. The Commissioner may not
11 promulgate any rule which prohibits the holder of a farm
12 winery license from the advertising of a particular brand or
13 brands of wine produced by it, and the price of the wine:
14 *Provided, however*, That price may not be advertised in medium
15 of electronic communication subject to the jurisdiction of the
16 Federal Communications Commission. A manufacturer may
17 sell alcoholic liquors outside of the state.

§60-4-3a. Special Mini-distillery license to manufacture and sell.

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

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

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

17 (d) *Payments to market zone retailers*- Each mini-distillery
18 shall submit to the Commissioner ten percent of the gross sales
19 price or each retail liquor sale for the value of all sales at the
20 mini-distillery each month. This collection shall be distributed
21 by the Commissioner, at least quarterly, to each market zone
22 retailer located in the mini-distillery's market zone, proportion-
23 ate to each market zone retailer's annual gross prior years pre-
24 tax value sales.

25 (e) *Limitations on licensees* - No mini-distillery may sell
26 more than three thousand gallons of product at the mini-
27 distillery location the initial two years of licensure. The mini-
28 distillery may increase sales at the mini-distillery location by
29 two thousand gallons following the initial twenty-four month
30 period of licensure, and may increase sales at the mini-distillery
31 location each subsequent twenty-four month period by two

32 thousand gallons, not to exceed ten thousand gallons a year of
33 total sales at the mini-distillery location. No licensed mini-
34 distillery may produce more than twenty thousand gallons per
35 calendar year at the mini-distillery location. No more than one
36 mini-distillery licence may be issued to a single person or
37 entity.

§60-4-15. Amount of license fees.

1 A person to whom a license is issued under the provisions
2 of this chapter shall pay annually to the Commissioner a license
3 fee as follows, for:

- 4 (1) Distilleries, one thousand five hundred dollars;
- 5 (2) Wineries, one thousand five hundred dollars;
- 6 (3) Breweries, two hundred fifty dollars;
- 7 (4) Bottling plants, one hundred dollars;
- 8 (5) Wholesale druggists, fifty dollars;
- 9 (6) Institutions, ten dollars;
- 10 (7) Industrial use, fifty dollars;
- 11 (8) Industrial plants producing alcohol, two hundred fifty
12 dollars;
- 13 (9) Retail druggists, ten dollars;
- 14 (10) Farm wineries, fifty dollars;
- 15 (11) Mini-distilleries, fifty dollars.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

1 The provisions of this chapter may not prevent:

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

6 (2) A person, his or her family, or employee from giving or
7 serving such alcoholic liquors to guests in the residence, when
8 the gift or service is not for the purpose of evading the provi-
9 sions of this chapter;

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

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

§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
3 residence for consumption at his or her residence as permitted
4 by section one of this article;

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

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

11 (4) A person from manufacturing and selling wine made
12 from fruit produced by him or her within this state to persons

13 holding winery licenses, if the manufacture and sale is under
14 the supervision and regulation of the Commissioner;

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

31 (6) The holder of a mini-distillery license from selling
32 alcoholic liquor for off premises consumption sold retail at the
33 distillery.

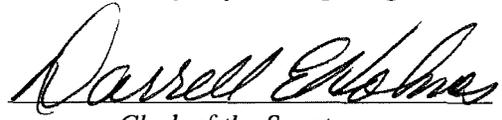
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

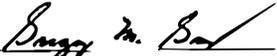

Chairman Senate Committee

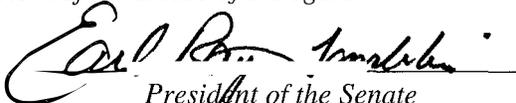

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

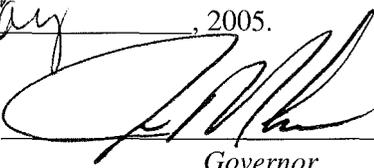

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 4th
day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:15am