

**H. B. 2957**

(By Delegates Skinner, Walters, Upson, Zatezalo, Hamrick,  
Statler and Caputo)

[Introduced February 24, 2015; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §60-1-4 and §60-1-5 of the Code of West Virginia, 1931, as amended;  
to amend and reenact §60-3-1 of said code; to amend and reenact §60-3A-1 and §60-3A-17  
of said code; 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 §60-1-4 and §60-1-5 of the Code of West Virginia, 1931, as amended, be amended and  
reenacted; that §60-3-1 of said code, be amended and reenacted; that §60-3A-1 and §60-3A-17 of  
said code, 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 1. GENERAL PROVISIONS.**

**§60-1-4. Sales to be made by or through West Virginia Alcohol Beverage Control  
Commissioner.**

Alcoholic liquors shall be sold at wholesale and retail in this state only by or through the  
West Virginia Alcohol Beverage Control Commissioner or retail agencies established by him or her

1 or any predecessor commissioners or commission, except as authorized by section three, article four  
2 and articles seven and eight of this chapter.

3 **§60-1-5. Definitions.**

4 For the purposes of this chapter:

5 "Alcohol" ~~shall~~ means ethyl alcohol whatever its origin and shall include synthetic ethyl  
6 alcohol but not denatured alcohol.

7 "Beer" ~~shall~~ means any beverage obtained by the fermentation of barley, malt, hops or any  
8 other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

9 "Nonintoxicating beer" ~~shall~~ means any beverage obtained by the fermentation of barley,  
10 malt, hops or similar products or substitute and containing not more alcohol than that specified by  
11 section two, article sixteen, chapter eleven of this code.

12 "Wine" ~~shall~~ means any alcoholic beverage obtained by the fermentation of the natural  
13 content of fruits, or other agricultural products, containing sugar.

14 "Spirits" ~~shall~~ means any alcoholic beverage obtained by distillation and mixed with potable  
15 water and other substances in solution and includes brandy, rum, whiskey, cordials and gin.

16 "Alcoholic liquor" ~~shall~~ includes alcohol, beer, wine and spirits and any liquid or solid  
17 capable of being used as a beverage, but shall not include nonintoxicating beer.

18 "Original package" ~~shall~~ means any closed or sealed container or receptacle used for holding  
19 alcoholic liquor.

20 "Sale" ~~shall~~ means any transfer, exchange or barter in any manner or by any means, for a  
21 consideration, and ~~shall~~ includes all sales made by principal, proprietor, agent or employee.

22 "Selling" ~~shall~~ includes solicitation or receipt of orders; possession for sale; and possession

1 with intent to sell.

2 "Person" ~~shall~~ means an individual, firm, partnership, limited partnership, corporation or  
3 voluntary association.

4 "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend,  
5 bottle or fill an original package with any alcoholic liquor.

6 "Manufacturer" ~~shall~~ means any person engaged in the manufacture of any alcoholic liquor,  
7 and among others includes a distiller, a rectifier, a wine maker and a brewer.

8 "Brewery" ~~shall~~ means an establishment where beer is manufactured or in any way prepared.

9 "Winery" ~~shall~~ means an establishment where wine is manufactured or in any way prepared.

10 "Distillery" ~~shall~~ means an establishment where alcoholic liquor other than wine or beer is  
11 manufactured or in any way prepared.

12 "Public place" ~~shall~~ means any place, building or conveyance to which the public has, or is  
13 permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and  
14 corridors of hotels and any highway, street, lane, park or place of public resort or amusement:

15 *Provided*, That the term "public place" ~~shall~~ does not mean or include any of the above-named places  
16 or any portion or portions thereof which qualify and are licensed under the provisions of this chapter  
17 to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the term "public  
18 place" shall not mean or include any legally demarcated area designated solely for the consumption  
19 of beverages and freshly prepared food that directly connects and adjoins any portion or portions of  
20 a premises that qualifies and is licensed under the provisions of this chapter to sell alcoholic liquors  
21 for consumption thereupon: *Provided further*, That the term "public place" ~~shall~~ also does not  
22 include a facility constructed primarily for the use of a Division I college that is a member of the

1 National Collegiate Athletic Association, or its successor, and used as a football, basketball,  
2 baseball, soccer or other Division I sports stadium which holds a special license to sell wine pursuant  
3 to the provisions of section three, article eight of this chapter, in the designated areas of sale and  
4 consumption of wine and other restrictions established by that section and the terms of the special  
5 license issued thereunder.

6 "State liquor store" ~~shall~~ means a store established and operated by the commission under  
7 this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

8 "An agency" ~~shall~~ means a drugstore, grocery store or general store designated by the  
9 commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control  
10 Commissioner.

11 "Department" ~~shall~~ means the organization through which the commission exercises powers  
12 imposed upon it by this chapter.

13 "Commissioner" or "commission" ~~shall~~ means the West Virginia Alcohol Beverage Control  
14 Commissioner.

15 "Intoxicated" ~~shall~~ means having one's faculties impaired by alcohol or other drugs to the  
16 point where physical or mental control or both are markedly diminished.

17 "Licensed retailer" means a person licensed under article three-a of this chapter to operate  
18 a retail outlet holding a Class A retail license or Class B retail license obtained through the bidding  
19 process.

20 "Retail licensee" means a licensed retailer.

21 **ARTICLE 3. SALES BY COMMISSIONER.**

22 **§60-3-1. Sales at retail and wholesale.**

1           The sale of alcoholic liquors at wholesale and retail in this state is a state monopoly, except  
2 for sales made by authority of section three, article four and articles seven and eight of this chapter.

3 **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

4 **§60-3A-1. Short title.**

5           This article shall be known and may be cited as the "State Retail Liquor License Act" or the  
6 act by which retail licensees bid for licenses.

7 **§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from**  
8 **state; transportation and storage; method of payment.**

9           (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to  
10 retail licensees and those licensed to manufacture and sell liquor pursuant to section three, article  
11 four of this chapter. The commissioner shall sell liquor, other than wine, to retail licensees according  
12 to a uniform pricing schedule. The commissioner shall obtain if possible, upon request, any liquor  
13 requested by a retail licensee.

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

18           (c) The commissioner shall specify the maximum wholesale markup percentage which may  
19 be applied to the prices paid by the commissioner for all liquor, other than wine, in order to  
20 determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail  
21 licensee shall purchase all liquor, other than wine, for resale in this state only from the  
22 commissioner, and the provisions of sections twelve and thirteen, article six of this chapter shall not

1 apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from  
2 a wine distributor who is duly licensed under article eight of this chapter. All liquor, other than  
3 wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated  
4 by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon  
5 written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

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

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

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

## 20 **ARTICLE 4. LICENSES.**

### 21 **§60-4-3. To whom licensed manufacturer may sell.**

22 A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this

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

9 **§60-4-3a. Distillery and mini-distillery license to manufacture and sell.**

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

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

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

21 (d) *Payments to market zone retailers.* -- Each distillery or mini-distillery shall submit to the  
22 commissioner ten percent of the gross sales price or each retail liquor sale for the value of all sales

1 at the distillery or the mini-distillery each month. This collection shall be distributed by the  
2 commissioner, at least quarterly, to each market zone retailer located in the distillery or mini-  
3 distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax  
4 value sales.

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

NOTE: The purpose of this bill is to clarify the regulation of retail sales by distilleries and mini-distilleries.

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