

SB574

FILED

2015 MAR 31 A 11: 27

**WEST VIRGINIA LEGISLATURE**

**EIGHTY-SECOND LEGISLATURE**

**REGULAR SESSION, 2015**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

—●—  
**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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[Passed March 14, 2015; in effect ninety days from passage.]

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.

*Paul R. Marshall*  
.....  
Chairman Senate Committee

*John B. Hill*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark Barnes*  
.....  
Clerk of the Senate

*Stephan J. Harkin*  
.....  
Clerk of the House of Delegates

*Millie J. Peltz*  
.....  
President of the Senate

*John W. Miller*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *31<sup>st</sup>*  
*March*  
Day of ....., 2015.

*Carl Ray Tomblin*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:25 pm