

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Engrossed
Committee Substitute
for
Senate Bill 934

BY SENATOR QUEEN

[Reported March 26, 2025, from the Committee on
Finance]

1 A BILL to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; and to
2 amend the code by adding a new article, designated §60-8B-1, §60-8B-2, §60-8B-3, §60-
3 8B-4, and §60-8B-5, relating to the manufacture, sale, and distribution of low-proof spirit
4 alcohol products.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 (1) "Alcohol" means ethyl alcohol whatever its origin and shall include synthetic ethyl
3 alcohol but not denatured alcohol.

4 (2) "Alcoholic liquor" includes alcohol, beer, wine, low-proof spirit alcohol products, and
5 spirits, and any liquid or solid capable of being used as a beverage, but shall not include
6 nonintoxicating beer.

7 (3) "An agency" means a drugstore, grocery store, or general store designated by the
8 commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control
9 Commission.

10 (4) "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any
11 other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

12 (5) "Brewery" means an establishment where beer is manufactured or in any way
13 prepared.

14 (6) "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control
15 Commissioner.

16 (7) "Department" means the organization through which the commission exercises powers
17 imposed upon it by this chapter.

18 (8) "Distillery" means an establishment where alcoholic liquor other than wine or beer is
19 manufactured or in any way prepared.

(9) "Intoxicated" means a person's faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.

(10) "Low-proof spirit alcohol product" means any alcoholic liquor beverage drink, other than wine or beer containing one half of one percent or more of alcohol by volume, but not more than 15.5 percent alcohol by volume (31 proof) obtained by distillation, mixed with drinkable seltzer water, fruit juices, flavoring or coloring materials, other alcoholic or non-alcoholic beverages or other ingredients to create a beverage that is packaged in an aluminum or other metal can only.

~~(10)~~(11) "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include, but are not limited to: Coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

~~(11)~~(12) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

~~(12)~~(13) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

~~(13)~~(14) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by §11-16-2 of this code.

~~(44)~~(15) "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.

~~(45)~~(16) "Person" means an individual, firm, partnership, limited partnership, corporation, or voluntary association.

~~(46)~~(17) "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.

~~(47)~~(18) "Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement: *Provided*, That the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the term "public place" shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this chapter to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term "public place" shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of §60-8-3 of this code, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

~~(48)~~(19) "Sale" means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.

~~(19)~~(20) "Selling" includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

~~(20)~~(21) "Spirits" means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

~~(24)~~(22) "State liquor store" means a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

~~(22)~~(23) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

~~(23)~~(24) "Winery" means an establishment where wine is manufactured or in any way prepared.

§60-8B-1. Declaration of legislative findings, policy, and intent; construction.

It is hereby found by the Legislature and declared to be the policy of this state that it is in the public interest to regulate and control the manufacture, sale, distribution, transportation, storage, and consumption of the beverages regulated by this article within this state and that, therefore, the provisions of this article are a necessary, proper, and valid exercise of the police powers of this state and are intended for the protection of the public safety, welfare, health, peace, and morals and are further intended to eliminate, or to minimize to the extent practicable, the evils attendant to the unregulated, unlicensed, and unlawful manufacture, sale, distribution, transportation, storage, and consumption of such beverages and are further intended to promote temperance in the use and consumption thereof. The Legislature further finds and declares that advertising is essential to the growth of business and job promotion within the state. In order to further these ends, the provisions of this article and of the rules promulgated pursuant thereto, shall be construed so that the accomplishment of these stated purposes may be effectuated.

§60-8B-2. Definition of low-proof spirit alcohol products.

1 "Low-proof spirit alcohol product" means any alcoholic liquor beverage drink, other than
2 wine or beer, containing one half of one percent or more of alcohol by volume, but not more than
3 15.5 percent alcohol by volume (31 proof) obtained by distillation, mixed with drinkable seltzer
4 water, fruit juices, flavoring or coloring materials, other alcoholic or non-alcoholic beverages or
5 other ingredients to create a beverage that is packaged in an aluminum or other metal can only.

§60-8B-3. Applicability of other laws; license to manufacture, sell, and distribute low-proof spirits products.

1 (a) Manufacture of low-proof spirit alcohol products. — Beginning July 1, 2030, except as
2 stated in this article, all distillery licenses and other requirements for the manufacture of alcoholic
3 liquors set forth in §60-4-2 and §60-4-3a of this code, and any rules promulgated by the
4 commissioner thereunder, shall apply to the manufacture of low-proof spirit alcohol products. All
5 procedures for obtaining and maintaining a license for the manufacture of low-proof alcohol spirit
6 products shall comply with the requirements of §60-4-1 et seq. of this code and any rules
7 promulgated by the commissioner thereunder. No additional alcoholic liquor license fees shall be
8 charged for the privilege of manufacturing low-proof spirit alcohol products.

9 (b) Sales of low-proof spirit alcohol product. — Beginning July 1, 2030, any person or
10 licensee legally authorized to manufacture, distribute, or sell low-proof spirit alcohol products may
11 sell low-proof spirit alcohol products in the same manner and to the same persons, and subject
12 to the same limitations and conditions, as such license or legal right authorizes him or her to
13 manufacture, distribute, or sell nonintoxicating beer as set forth in §11-16-1 et seq. of this code:
14 Provided, That no person or licensee shall be permitted to sell low-proof spirit alcohol products in
15 growlers as defined in §11-16-1 et seq. of this code, and any rules promulgated by the
16 commissioner thereunder. The provisions of §60-4-3 of this code, which require that sales by a
17 manufacturer of alcoholic liquors may only be sold to the West Virginia Alcohol Beverage Control
18 Commissioner and to wholesalers and retailers licensed as provided in chapter 60 of this code,

are inapplicable to sales of low-proof spirit alcohol products. No additional license fees shall be charged for the privilege of selling low-proof spirit alcohol products.

(c) Distribution of low-proof spirit alcohol products. — Beginning July 1, 2030, except as stated in this article, the distribution of low-proof spirit alcohol products shall be administered and carried out in the same manner as prescribed for nonintoxicating beer distribution as set forth in §11-16-1 et seq. of this code and any rules promulgated by the commissioner thereunder. Any person or licensee legally authorized to distribute low-proof spirit alcohol products must distribute low-proof spirit alcohol products in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute nonintoxicating beer. No manufacturer or distillery may self-distribute low-proof spirit alcohol products. No additional license fees shall be charged for the privilege of distributing low-proof spirit alcohol products.

§60-8B-4. Taxation; reporting; penalties for failure to file returns; application of state tax law; rule-making authority.

(a) Beginning July 1, 2030, there is hereby levied and imposed on all low-proof spirit alcohol products sold on and after the effective date, by every distillery, or supplier to distributors, a tax of \$1.25 per gallon, in like ratio for any partial gallon or other unit of measure.

(b) Beginning July 1, 2030, on the 15th day of each month thereafter, every distillery and distributor shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label, and alcoholic content of low-proof spirit alcohol products sold by the distillery to West Virginia distributors or to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the low-proof spirit alcohol products sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner. The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section

13 shall be considered tax returns covered by the provisions of §11-10-1 et seq. of this code. Failure
14 to timely file the tax returns within five calendar days of the 15th day of each month subjects a
15 distillery and distributor to penalties under §11-16-23 of this code.

16 (c) Administrative procedures. — Each and every provision of the West Virginia Tax
17 Procedure and Administration Act set forth in §11-10-1 et seq. of this code applies to the taxes
18 imposed pursuant to this section, except as otherwise expressly provided in this article, with like
19 effect as if that act were applicable only to the taxes imposed by this section and were set forth
20 in extenso in this article.

21 (d) Criminal penalties. — Each and every provision of the West Virginia Tax Crimes and
22 Penalties Act set forth in §11-9-1 et seq. of this code applies to the taxes imposed pursuant to
23 this section with like effect as if that act were applicable only to the taxes imposed pursuant to
24 this article and were set forth in extenso in this article.

25 (e) The Tax Commissioner may propose legislative rules for legislative approval, pursuant
26 to §29A-3-1 et seq. of this code to implement this section.

§60-8B-5. Rule-making authorization; effective date.

1 (a) The West Virginia Alcoholic Beverage Control Commissioner may propose legislative
2 rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this article.

3 (b) The provisions of this article shall take effect on July 1, 2030.