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WEST VIRGINIA CODE

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-1. Purpose of chapter; declaration of legislative findings, policy and intent.

The purpose of this chapter is to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment; and it is hereby found by the Legislature and declared to be the public policy of this state to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of alcoholic liquors and at the same time to assure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this state. To these ends the police power of this state is pledged to the sound control and the temperate use of alcoholic liquors. In order to further promote and foster the hereinabove policy of the Legislature, the provisions of this chapter and of the rules and regulations promulgated pursuant thereto shall be construed so as to accomplish and effectuate these stated purposes.

§60-1-2. Applicability of chapter.

A person shall not sell, possess for sale, transport, or distribute alcoholic liquors in this state except in accordance with the provisions of this chapter.

§60-1-3. Restrictions on sale, manufacture or consumption; exceptions.

Subject to the provisions of this chapter, alcoholic liquors, in this state:

- (1) Shall be sold only in sealed packages, except by organizations licensed under authority of article seven of this chapter.
- (2) Shall not be sold for consumption on the premises where sold, except as authorized by article seven of this chapter.
- (3) Shall be manufactured only by persons licensed under the provisions of this chapter.
- (4) Shall not be consumed or sold for consumption in a public place.

§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 any

predecessor commissioners or commission, except as authorized by articles seven and eight of this chapter.

§60-1-5. Definitions.

For the purposes of this chapter:

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

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

"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 section two, article sixteen, chapter eleven of this code.

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

"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.

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

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

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

"Selling" includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

"Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.

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

"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.

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

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

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

"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 premises 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 also not include a facility constructed primarily for the use of a Division I college 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 sports stadium which holds a special license to sell wine pursuant to the provisions of section three, article eight of this chapter, 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.

"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.

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

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

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

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

"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.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter "Farm winery" means an establishment where in any year fifty thousand gallons or less of wine and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products containing sugar and where port, sherry and Madeira wine may also be manufactured, with twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment and no more than twenty-five percent of such produce originating from any source outside this state. Any port, sherry or Madeira wine manufactured by a winery or a farm winery must not exceed an alcoholic content of twenty-two percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

§60-1-5b. Mini-distilleries defined.

For the purpose of this chapter: "Mini-distillery" means an establishment where in any year no more than twenty thousand gallons of alcoholic liquor is manufactured with no less than twenty-five percent of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than twenty-five percent of raw agricultural products originating from any source outside this state: *Provided*, That the maximum allotted production amounts shall not exceed the annual incremental production limitations provided for pursuant to section three-a of this article: *Provided, however*, That a distillery licensed and operating as of the effective date of this section that applies for designation by the Commissioner as a mini-distillery is eligible to be licensed as a mini-distillery without compliance with the requirements for the percentage use of on-premises grown and in-state raw agricultural products.

§60-1-6. How chapter cited.

This chapter may be cited as the "Alcohol Beverage Control Act".

§60-1-7. Applicability of chapter to nonintoxicating beer.

The provisions of this chapter do not apply to nonintoxicating beer except as is otherwise specifically provided.