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WEST VIRGINIA CODE

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

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

The sale of alcoholic liquors at wholesale and retail in this state shall be a state monopoly, except for retail sales made by authority of article six, section two and article seven of this chapter. Alcoholic liquors shall be sold at retail only through the state stores, agencies of the West Virginia alcohol beverage control commissioner, and may be sold by private clubs holding a license issued under the provisions of article seven of this chapter.

The commissioner may sell such liquors at wholesale to persons licensed to purchase at wholesale as provided in this chapter and wine may be sold by farm wineries licensed under and subject to the provisions of this chapter.

(NOTE: The preceding version of §60-3-1 is in the form of H.B. 935 enacted March 5, 1981, relating to making certain exemptions from the state monopoly on the sale of wine. Specifically, section two, article six of this chapter relating to the manufacture and sale of cider and the provision on farm wineries licensed under chapter sixty are the exemptions. See the following version of this same section enacted in a different form. For 1981 Acts, see chapter 218.)

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

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

(NOTE: The preceding version of §60-3-1 is in the form of H.B. 1111 enacted March 26, 1981, mainly removing the state monopoly on the sale of wine. See above the first version of this same section enacted in a different form. For 1981 Acts, see chapter 217.)

§60-3-2. Establishment and discontinuance of stores and agencies; location.

The commission shall establish state stores and agencies at places throughout the state so as to serve adequately and reasonably the demand for the sale at retail of alcoholic liquors, subject only to the limitations imposed by article five of this chapter. It may discontinue a store or agency when in its opinion it is advisable to do so.

A store or agency shall not be located in the immediate vicinity of a church or school.

§60-3-3. Warehouses.

The commission shall establish and manage as many warehouses as may be necessary, but not more than four, for the storage of alcoholic liquors and the supply of state stores and agencies.

§60-3-4. Managers and employees of stores.

The commission shall appoint a manager for and assign employees to each state store. The manager shall be responsible to the commission for the conduct and operation of the store.

§60-3-5. Rules and regulations to govern stores and agencies.

The commission shall issue appropriate rules and regulations to govern the conduct of state stores and agencies.

§60-3-6. Agencies to procure stocks; sales at retail.

A state agency shall procure stocks of alcoholic liquor for sale at retail only from the commission. Sales at retail in agencies shall be made in the same manner as sales in state stores.

§60-3-7. Compensation and bond of agent.

Agents shall be compensated based upon the average monthly gross revenues of the agency or store, excluding sales tax thereon. The amount of compensation shall be computed and paid as follows:

(1) For gross revenues up to three thousand dollars per month, four hundred dollars compensation per month.

(2) For gross revenues of not less than three thousand dollars nor more than six thousand dollars per month, ten percent of all gross revenues between said three thousand dollars and six thousand dollars, which shall be in addition to the compensation as provided in subdivision (1) hereinabove.

(3) For gross revenues of not less than six thousand dollars nor more than eight thousand dollars per month, eight percent of all gross revenues between said six thousand dollars and eight thousand dollars, which shall be in addition to the compensation as provided in subdivisions (1) and (2) hereinabove.

(4) For gross revenues of not less than eight thousand dollars nor more than ten thousand dollars per month, six percent of all gross revenues between said eight thousand dollars and ten thousand dollars, which shall be in addition to the compensation as provided in subdivisions (1), (2) and (3) hereinabove.

(5) For gross revenues over ten thousand dollars per month, four percent of all gross revenues over said ten thousand dollar amount, which shall be in addition to the compensation as provided in subdivisions (1), (2), (3) and (4) hereinabove.

The agent shall pay for utilities, renovations and operating expenses of the agency from the compensation set forth herein.

Each agent shall give bond in an amount fixed by the commissioner conditioned upon the faithful observance of the provisions of this chapter, compliance with the rules and regulations of the commissioner, and the accounting for and paying over of all moneys coming into his custody by virtue of his agency. An agent shall not, at any time, have on hand a stock of alcoholic liquors greater in value than the amount of his bond.

§60-3-8. Agent to make no profit from sales.

An agent shall make no profit from the sale of alcoholic liquors, nor shall he receive compensation for the performance of his duties as agent other than that paid him by the commission.

§60-3-9. Uniform prices; posting and distribution of price lists; continuation of price increase on alcoholic liquors.

The commissioner shall, from time to time, fix uniform prices for each variety, class and brand of alcoholic liquors offered for sale in state stores. Alcoholic liquors shall be sold in state stores and agencies only at the uniform prices fixed by the commissioner.

The commissioner shall prepare price lists showing the price of each variety, class or brand. Price lists shall be posted prominently in each store and shall be available for distribution and inspection in every state store and agency.

The commissioner, in the exercise of his authority under this section, is hereby directed to continue the increase in the price of alcoholic liquors, heretofore effected pursuant to the provisions of this section as amended by chapter six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one, which is presently producing an additional annual revenue of one million six hundred thousand dollars on an annual volume of business equal to the average for the past three years.

The revenue derived from the increase in the price of alcoholic liquors shall be deposited into the general revenue fund in the manner hereinafter provided in section seventeen of this article.

§60-3-9a.

Repealed. Acts, 1991 Reg. Sess., Ch. 118.

§60-3-9b.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

§60-3-9c.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied a tax upon all purchases outside the

corporate limits of any municipality of intoxicating liquor from state stores or other agencies of the alcohol beverage control commissioner, of wine from any person licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, and of wine from distributors

licensed to sell or distribute wine under the provisions of said article eight. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the commissioner, by the person licensed to sell wine at retail, or by the distributor licensed to sell or distribute wine, as the case may be: *Provided*, That no such tax shall be collected on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven of this chapter.

All such tax collected within one mile of the corporate limits of any municipality within the state shall be remitted to such municipality; all other tax so collected shall be remitted to the county wherein collected: *Provided*, That where the corporate limits of more than one municipality be within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of said municipalities: *Provided, however*, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

The West Virginia alcohol beverage control commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases outside the corporate limits of any municipality of intoxicating liquor from state stores or other agencies of the alcohol beverage control commissioner, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. The tax commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases outside the corporate limits of any municipality of wine from any person licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine under the provisions of said article eight, and shall also provide for separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the counties and municipalities.

§60-3-10. Records and accounts for stores and agencies; reports and audits.

The commission shall install a uniform system of records and accounts for state stores and agencies. It shall require a daily report of sales and stock inventory, and shall audit the accounts and check the stock inventory of each store and agency at least once in every thirty days.

§60-3-11. Stock or inventory control.

The commission shall prescribe a method of stock or inventory control that will show the amount of each variety, class and brand of alcoholic liquor on hand in each state store, agency, and warehouse at any time. The commissioner shall not list or stock powdered alcohol in inventory.

§60-3-12. Days and hours state stores and agencies may open.

The commission shall fix the days on which state stores shall be open and the hours of opening

and closing, and the hours during which agencies may sell alcoholic liquors. Stores shall not be open nor shall agencies sell alcoholic liquors on:

1. Sundays.
2. Any general election day.

§60-3-13. Advertising or recommendation of brands prohibited.

A store or agency shall not display or distribute any advertising matter, nor shall a person employed in a state store or agency advertise or recommend any type, class or brand of alcoholic liquors.

§60-3-14. Acquisition of equipment, etc.; analysis of liquors.

The commission shall acquire by purchase or lease equipment, materials, supplies and other property necessary for the operation of state stores in the manner required for the purchase or lease of property by other state departments. This requirement shall not apply to the purchases of alcoholic liquor for sale or to the leasing of premises for state stores or warehouses.

The commission shall require a sworn statement with the delivery of alcoholic liquors purchased by it that the goods are as represented, and do not contain any impure or deleterious matter. The commission shall by frequent chemical analysis determine that liquors offered for sale in state stores and agencies are pure, potable, and not misrepresented.

§60-3-15. Amount of operating fund and value of inventory stock allowed; contract for manufacture of state brand; ordering listed and unlisted brands.

In order to avoid the accumulation of excessive stocks in warehouses and stores, the commissioner shall so plan his purchases of alcoholic liquors for sale in state stores and agencies that none of the stock on hand be on a consignment basis and that the amount of operating fund and the value of inventory stock shall not exceed twenty million dollars.

The commissioner may, with the consent of the governor, contract for the manufacture of alcoholic liquors for sale in state stores and agencies. Such liquors shall bear a special designation as "state brand."

Listed brands and sizes of spirituous liquors shall not be reordered in quantities greater than at the rate of comparative gross sales as determined by the last three monthly reports published prior to each reorder: *Provided*, That to take advantage of price discounts or to anticipate price increases listed brands may be reordered upon the basis of anticipated needs to be determined by projecting adjusted sales records; but in no event shall the amount of operating fund and the value of inventory stock exceed the limit provided in the first paragraph of this section.

The initial order of any new or unlisted brand of spirituous liquor, excepting wine, shall not exceed five hundred cases. The initial order of new or unlisted wine brands shall not exceed fifteen hundred cases.

§60-3-16. Sale in sealed packages; manufacturer's label.

Alcoholic liquors shall be sold only in sealed packages, bearing such seals and labels as the commission may require.

A manufacturer of liquor offered for sale in state stores and agencies shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commission may require.

§60-3-17. Regulations as to handling and depositing of moneys collected; monthly remittances; penalty.

The commissioner, with the approval of the state treasurer, shall prescribe regulations for the handling and depositing of all moneys collected by the commissioner. All receipts accruing to and available for the general revenue fund in excess of the requirements of the operating fund and the license fee and additional sales tax imposed by the provisions of this chapter shall be remitted by the commissioner to the state treasury monthly within fifteen days next after the end of each calendar month.

If the commissioner fails to remit such moneys to the state treasury within the time specified in accordance with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars.

§60-3-18. Operating fund continued; use; maximum amount.

The operating fund of the commissioner, heretofore created in the state treasury, is hereby continued and shall be a revolving fund from which all operation and administration expenses of the commissioner shall be paid.

All moneys collected by the commissioner shall be credited to the operating fund until that fund reaches an amount sufficient for the current and routine requirements of the office of the West Virginia alcohol beverage control commissioner, this amount to be not in excess of the amount hereinbefore provided in section fifteen of this article.

§60-3-19.

Repealed.

Acts, 1966 Reg. Sess., Ch. 3.

§60-3-19a.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

§60-3-20. Sales, mode of payment.

The sale of alcoholic liquors in state stores and in state agencies shall be for cash, money order, certified check, cashier's check or traveler's check only. In the case of private clubs as defined in

article seven of this chapter, letters of credit from banks guaranteeing payment of checks may be filed with the commissioner. Filing of such letters may permit the commissioner to accept the club's check.

§60-3-21. Limitation on amount to be sold.

Not more than ten gallons of alcoholic liquor shall be sold to a person at one time without the approval of the commissioner or his representative; but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes, and sales in case lots may be made in the discretion of the commissioner: *Provided*, That this section shall not apply to private clubs as defined in article seven of this chapter.

§60-3-22. Sales to certain persons prohibited.

(a) Alcoholic liquors and nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code shall not be sold to a person who is:

- (1) Less than twenty-one years of age;
- (2) An habitual drunkard;
- (3) Intoxicated;
- (4) Addicted to the use of any controlled substance as defined by any of the provisions of chapter sixty-a of this code; or
- (5) Mentally incompetent.

(b) It shall be a defense to a violation of subdivision (1), subsection (a) of this section if the seller shows that the purchaser:

- (1) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
- (2) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

§60-3-22a. Unlawful acts by persons.

(a) Any person under the age of twenty-one years who, for the purpose of purchasing alcoholic liquors from a state liquor store or an agency, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase alcoholic liquors from a state liquor store or an agency, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(b) Any person who shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom they are not related by blood or marriage, any alcoholic liquors from whatever source, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

§60-3-23. Conduct of purchasers upon premises of state store.

A person, while on the premises of a state store or agency, shall not:

- (1) Break the seal upon any package of alcoholic liquors;
- (2) Consume alcoholic liquor;
- (3) Loiter.

§60-3-24. Authority of employees to make arrests; penalty for resisting or assaulting employee; enforcement of chapter.

An appointee or employee of the commission shall have the authority of a peace officer, to arrest a person for an act committed on or about the premises of a state warehouse, state store, or agency, and in his presence, which amounts to:

- (1) A violation of a provision of this chapter;
- (2) Disorderly conduct.

The commission shall furnish its appointees and employees with an official badge as evidence of this authority.

A person who resists or commits an assault upon an appointee or employee of the commission while engaged in the performance of his duties hereunder shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in jail not less than thirty days nor more than six months, or, in the discretion of the court, by both such fine and imprisonment.

Members of the commission are hereby vested, and such officers, agents and employees of the commission as shall be designated by the commission shall, upon being so designated, be vested, with like power and authority to enforce the provisions of this chapter and the criminal laws of the state relating thereto as are vested in sheriffs of counties and members of the department of public safety.

§60-3-25. Permit for farm winery to import produce in excess of established limits.

Upon application by the holder of a farm winery license, filed with the West Virginia alcohol beverage control commissioner, showing, due to unusual climatic or other conditions adversely affecting its ability to obtain from within this state seventy-five percent of the grapes, grape juice, other fruits or fruit juices or honey necessary to produce its wine, the commissioner may issue to the applicant a permit to import such products in an amount deemed necessary by the

commissioner to allow such farm winery to produce wine within the quota established by section five-a, article one of this chapter. The permit issued under this section shall not be effective for more than ninety days. The burden of proof shall be upon the applicant to show that grapes, grape juice, fruit, fruit juice or honey of the type normally used by the licensee are not available from any other source within the state of West Virginia, and no application for a permit under this section shall be considered by the commissioner unless it is accompanied by written findings by the West Virginia agriculture commissioner in support thereof.