

# AMERICA'S DUMBEST DRINKS LAWS

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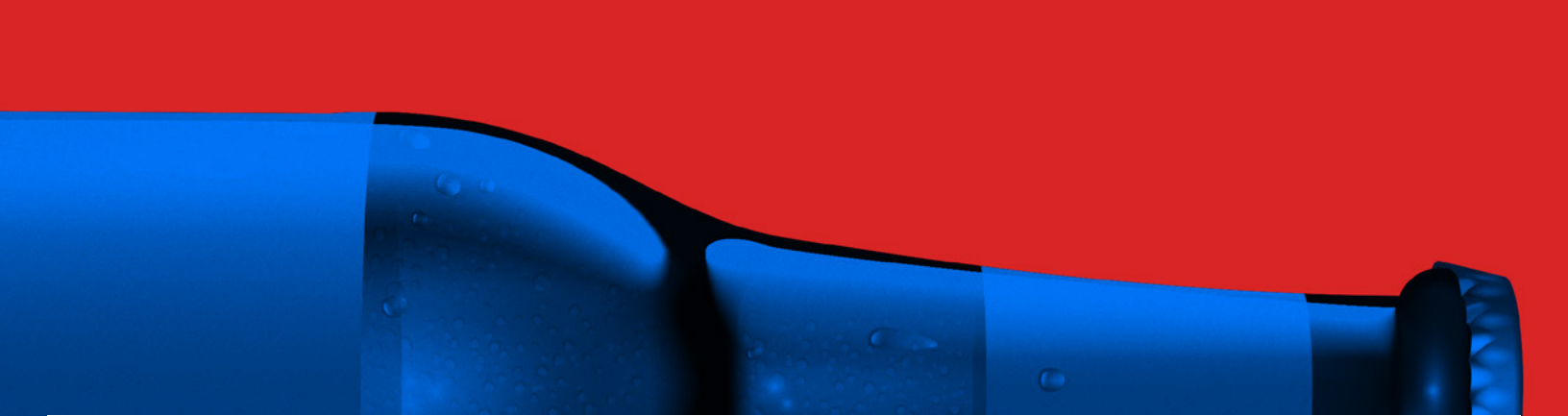
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Each December, Americans around the country congregate at their favorite watering holes to celebrate “Repeal Day.” America’s long, harmful experiment with banning alcohol ended on December 5, 1933, and modern drinkers continue to be thankful that they are now officially free to “get their booze on.”

But are they really? While prohibition has indeed been relegated to the dustbin of history, we’re still far from free when it comes to drinking. Yes, even today, alcohol continues to be subjected to a host of nonsensical, onerous and sometimes downright silly restrictions. Do you like enjoying a cold beer on a hot day? Well, stay away from Indiana. It bans gas stations from selling refrigerated beer. Want to indulge in a fancy craft cocktail at an upscale speakeasy on date night? Sorry, Virginia lovers! The “Old Dominion” only allows full-service food restaurants to serve hard spirits.

So, where do all these wacky rules come from anyway?

Well, even though Prohibition was repealed in the 1930s, anti-alcohol sentiments did not die away overnight. In fact, a strange mix of temperance advocates, progressives and religious leaders continued to decry the supposedly deleterious effects of alcohol and sought to control public access to it. And although the 21st amendment repealed Prohibition, it still allowed state and local governments broad control over hooch.

States and localities seized this opportunity and rushed in to fill the regulatory void left when the federal government exited the booze business. In the wake of Prohibition, nearly every state either took control of alcohol sales itself or established what has become known as the “three-tiered” system, which requires legal separation between producers, distributors and retailers of booze.

These antiquated regulatory regimes have long since reached their sell-by date—after all, almost no other industry in the United States is regulated in a similar way. Nevertheless, they stubbornly persist. As a result, we still have many, head-scratching alcohol rules on the books. In fact, even more modern alcohol laws that do not trace their lineage to the post-Prohibition era were often inspired by similar forces. Modern moralizers—call them neo-Prohibitionists—are quick to push scare campaigns about the evils of even moderate alcohol consumption. And even less sympathetically, our present system of alcohol regulation has created vested interests that are fiercely protective of this outdated system. Given our modern society, it would make sense for human beings to be treated as adults when it comes to booze. This would mean deregulating the alcohol industry to create a rational system that encourages innovation and growth, while also ensuring public health and safety.

Since many of today’s alcohol laws fail on all these counts, our alcohol policy team has put together the definitive list of the Worst Booze Laws in America. And, in honor of a nice 12-pack of delicious beer, we chose our top (bottom?) 12—even though they’re way less refreshing.

With a little luck and a lot of deliberate action, there will come a day when this list will be a thing of the past but today, let’s sit back, crack open a hard cider and have a good laugh scream.

# 12

## VIRGINIA'S DREADED RATIO

Virginia has many nonsensical booze laws, not least of which is its infamous food-beverage ratio. This law requires bars and restaurants to sell \$45 worth of food or non-alcoholic drinks for every \$55 worth of hard spirits they sell.<sup>1</sup> This may not seem remarkable but requiring establishments to offset liquor sales with food sales makes it nearly impossible for high-end craft cocktail bars, speakeasies or martini lounges to survive, since their business models revolve around expensive drinks (and little-to-no served food). Even worse, the law only applies to distilled spirits, meaning that beer and wine are arbitrarily excluded.<sup>2</sup>

The ratio traces its roots to the aftermath of Prohibition. In 1933, it was illegal for any restaurant in Virginia to sell alcohol. By 1968, the Mixed Beverage Act gave municipalities the autonomy to decide the ratios for themselves but it also introduced the rule that restaurants could not make more money selling alcohol than food. This requirement was eventually codified to a 45/55 food-to-alcohol sales ratio, and today the law lives on because a group of powerful restaurateurs insist that high-end bars are detrimental to society. In reality, however, these interests are using the law as a protectionist cudgel against competition from new business models like cocktail lounges or whiskey bars.

Virginians enjoy classy cocktails as much as their neighboring states, but until this law is scrapped, they'll have to take their business elsewhere.

# 11

## D.C.'S PITCHER CRACK DOWN

In D.C., you can drink at bars and you can walk around at bars, but you cannot drink and simultaneously walk around at bars.<sup>3</sup> This is because the D.C. Alcoholic Beverage Control Board explains that when it comes to so-called "bottle service" in bars, patrons are not allowed to move alcoholic beverages in "any container holding multiple servings of alcoholic beverages" from their seating area. This includes pitchers, bottles of vodka and ostensibly, even double shots.

While the law itself may not be fully unique—Vermont goes further to prohibit pitchers larger than 32 oz.<sup>4</sup>—D.C.'s *rationale* for the law is what makes it worthy of this list. According to D.C. liquor regulators, the law was implemented "because large containers may be used as weapons during altercations."<sup>5</sup> Yes, you heard that right: potential pitcher violence is the official reason for the rule.

The benevolent D.C. regulators did provide at least some relief from the law, though, by clarifying that it is okay for patrons to lift pitchers to take a picture or to fill cups or glasses. So, at least for now, *pouring* from a pitcher is still legal—as long as you don't try to work the room while you do it.

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<sup>1</sup> Code of Virginia § 4.1-210.

<sup>2</sup> C. Jarrett Dieterle, "Virginia's infamous food-beverage ratio prioritizes cronyism over consumers," R Street Blog, June 27, 2016.

<sup>3</sup> District of Columbia Municipal Regulations and District of Columbia Register, 23-721.

<sup>4</sup> "In-House Training Booklet for Servers," Vermont Dept. of Liquor Control.

<sup>5</sup> Advisory Opinion on Patrons Removing Bottles From Seating Areas Under 23 DCMR § 721.

# 10

## UTAH'S (MODIFIED) ZION CURTAIN

One of the most notorious alcohol laws around has long been Utah's so-called "Zion Curtain."<sup>6</sup> This law literally required restaurants to erect a partition between the area where bartenders were mixing cocktails and where restaurant patrons sit. The rationale, of course, was to protect the children—the precious little children—from having to view booze being served and enjoyed by adults—even *though every other state in America* allows bars just to...function without any deleterious effects.

It might seem like good news, then, that Utah recently decided to tear down its Zion Curtain. Sadly, however, its effort to reform the law was far from straightforward. Now, restaurants in the state essentially have three options: keep the wall, create a smaller, 42-inch barrier or create a 10-foot "buffer zone" around the bar that children can't enter.<sup>7</sup> Restaurants and bars are also now required to hang a sign in the window declaring whether they are a "restaurant" or a "bar."<sup>8</sup>

So, while "Beehive State" residents will undoubtedly take whatever reform they can get, restaurants around the state will still be subject to restrictions that few other establishments in the country have to deal with.

# 9

## OHIO HATES SANTA CLAUS

Everyone loves Santa, right? Not Ohio, which prohibits alcohol advertisements from representing, portraying or making any reference to the jolly old St. Nick.<sup>9</sup> A similar law exists in Washington D.C.: Bars are not allowed to use statements, illustrations or pictures that refer to religious holidays or symbols to promote alcohol sales, service or consumption. This includes promoting drinks by referring to Santa Claus. So, yes, this means Ohio and D.C. both deserve coal in their stockings.

Making Santa even sadder, 27 states have at least some type of legal restriction against selling alcohol on Christmas.<sup>10</sup> The pretext for these laws is to protect religious worship. But there is (of course) no reason that people can't go to church Christmas morning and then responsibly enjoy some spiked eggnog later in the evening. Guess Santa's naughty list is going to be pretty long this year.

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<sup>6</sup> Utah Code § 32B-6-202.

<sup>7</sup> Ben Winslow, "The fall of the 'Zion Curtain' begins in restaurants all over Utah," Fox13now, July 1, 2017.

<sup>8</sup> Ibid.

<sup>9</sup> Ohio Administrative Code § 4301:1-1-44.

<sup>10</sup> Michelle Minton, "Christmas Liquor Bans: Is Your State on the List?", Competitive Enterprise Institute, Dec. 12, 2011.



# 8

## LOUISIANA'S (AND UTAH'S) MINIATURE BOTTLE BAN

Dierks Bentley may like singing about getting “Drunk on a Plane” but he better make sure his jet is taking off from the right state. America has had a long and complicated relationship with mini booze bottles.<sup>11</sup> Also known as airplane bottles (or nips), these little 50 ml vessels of joy are still frowned upon in many states, including Louisiana, which legalized larger 100 ml versions in 2014 but still prohibits the normal 50ml size.<sup>12</sup> The theory behind the ban appears to be that mini bottles simply accelerate drunkenness among the populace—even though they contain less booze.

Confusingly, Utah first legalized minis in 1969, since they were viewed as preferable to carrying large bottles in brown bags. In 1990, however, it reversed course and banned them.<sup>13</sup> Under the pretext of cracking down on litter, Maine also recently joined the anti-mini-bottle crusade by raising mini-bottle prices by 50 cents and requiring a 5-cent deposit for the bottles.<sup>14</sup> Further demonstrating the ridiculousness of the mini-bottle obsession, other locales, such as Washington, D.C., not *only* allow mini bottles but *require* customers to buy *at least six* every time they purchase them.<sup>15</sup>

Sadly, some state governments appear determined to make cramped airplane rides even more miserable for everyday Americans.

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<sup>11</sup> Wayne Curtis, “Mixopedia: The Secret Life of Mini Bottles,” *Imbibe*, May 23, 2018.

<sup>12</sup> Senate Bill No. 204, Act. No. 688, Regular Session, Louisiana Legislature, 2014.

<sup>13</sup> See, e.g., Kathy Stephenson, “Whatever happened to ... minibottles in Utah,” *The Salt Lake Tribune*, Jan. 2, 2017. ; Utah prohibits bottles smaller than 200 ml.

<sup>14</sup> Curtis.

<sup>15</sup> Government of the District of Columbia, *Alcoholic Beverage Regulation Administration*, Revised March 2016, § 25-751, p. 92.

# 7

## ALABAMA'S NAUGHTY LABELS OBSESSION

Alabama forbids booze advertisements that feature “a person posed in an immoral or sensuous manner.”<sup>16</sup> In 2009, the state used that law to ban a bottle that depicted a nude nymph flying with a bicycle.<sup>17</sup> Needless to say, policing what is “immoral or sensuous” is pretty tricky work, and raises questions about the many different types of alcohol for sale that include words like “bastard” in their names (as well as even more aggressive ones).<sup>18</sup>

Other states, such as Michigan, have similar laws. It infamously targeted Flying Dog’s “Raging Bitch” beer as “detrimental to the health, safety and welfare of the general public.” The brewery brought a First Amendment lawsuit against the “Wolverine State” and prevailed in court.<sup>19</sup> Michigan doubled down on its label enforcement when it forbade in-state Founder’s Brewing Co. from using a carton image of a baby eating oatmeal on the label of its Breakfast Stout, since state law prohibits “reference[s] in any manner to minors.”<sup>20</sup>

Regardless of whether one finds offensive labels tasteful or not, policing them only leads to targeting popular beverages that many responsible adults like to enjoy.

# 6

## IDAHO'S INFUSION BAN

Recently, Vermont’s liquor regulators made news by cracking down on bars that were infusing liquor. Since much of the modern craft cocktail revolution is predicated on building complex, handcrafted flavors into adult beverages, this didn’t go so well. Vermont finally acquiesced and announced that it will allow infusions.<sup>21</sup>

Idaho apparently has less shame. As recently as 2013, its Alcohol Beverage Control was *raiding* bars and confiscating bottles with infused alcohol.<sup>22</sup> The bars complained that they were simply responding to what customers wanted—and who doesn’t want infused vodkas?—but to no avail. Idaho insists on enforcing the rule, which means both infusions and barrel-aged cocktails are forbidden in the “Gem State.”

The state claims that it needs the law to protect consumers from being defrauded by bars that tamper with their liquor, such as by emptying a bottle of Grey Goose and filling it with something cheaper to pass off to customers.<sup>23</sup> Whether this has actually ever happened in Idaho is unclear, but needless to say, infusing some tequila with jalapeños is far different from hoodwinking restaurant patrons. So, until Idaho officials learn how to use their words and write a better law—or at least to interpret it in a more rational way—Idaho residents will be stuck with flavorless vodka.

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<sup>16</sup> Alabama Alcohol Beverage Control Board Administrative Code, Ch. 20-x-7.

<sup>17</sup> Phillip Rawls, “Alabama ban of wine with nude nymph on label is marketing boon,” ABC.

<sup>18</sup> Garret Ellison, “Media, beer lovers helped pressure Alabama to reverse Dirty Bastard ban, says Founders,” MLive, Nov. 11, 2012.

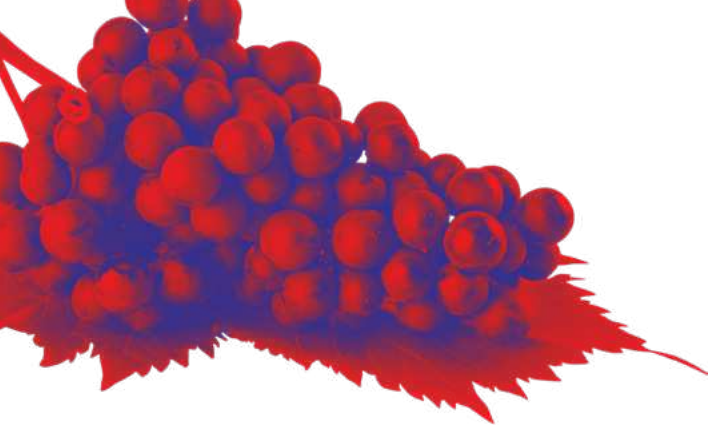
<sup>19</sup> Andy Sparhawk, “Flying Dog Wins Raging Bitch Label Lawsuit,” Craftbeer.com, Mar. 12, 2015.

<sup>20</sup> Garret Ellison, “Founders runs afoul of Michigan law with baby on Breakfast Stout label,” MLive, Jan. 14, 2016.

<sup>21</sup> Connor Cyrus, “Vt. liquor control to drop infusion ban,” WCAX, Jul. 24, 2018.

<sup>22</sup> See ID Code Title 23, Ch. 9, Sec. 921; and Tara Morgan, “Idaho’s Infusion Confusion,” Boise Weekly, Feb. 6, 2013.

<sup>23</sup> Ibid.



# 4

## VIRGINIA'S DISTILLERY DISCRIMINATION

Walk into any Virginia brewery and you can order as many beers as you want (although, like a bar, it's illegal to overserve). Ditto with wineries. Distilleries, too, you might assume? Nope! In Virginia, visitors to craft distilleries are limited to 3 oz. of distilled spirits *total* when it comes to drinking on-site.<sup>27</sup> If 3 oz. seems low, it is: the average cocktail has at least 1.5 to 2 oz. of spirits in it, making it nearly impossible for Virginia distilleries to feature their liquors in cocktail form. It also makes it difficult for patrons to try a full sampling of a distiller's different spirits before committing to a purchase.

But don't worry, it gets worse. When Virginia distillers sell bottles to visitors for them to take home, they have to send 100 percent of the money from the sale to Virginia's Alcoholic Beverage Control Authority. Once taxes and the government's mark-up are skimmed off the top, distillers only receive 46 percent of the purchase price back.<sup>28</sup>

The sad reality is that despite its claim to being the birthplace of whiskey, Virginia treats its distillers like second-class citizens compared to brewers and vintners.

# 5

## MINNESOTA'S GRAPE MANDATE

California may be the U.S. state most famous for its wine, but even states as far north as Minnesota have gotten in on the winemaking act. Unfortunately, the "Land of 10,000 Lakes" makes life as hard as possible for its vintners.

In Minnesota, farm wineries must source over 50 percent of their grapes from within the state, even if they do not want to.<sup>24</sup> As the Institute for Justice, which is challenging the law in court, has pointed out: This is a hard thing to do since Minnesota has a harsh climate for grapes, which restricts the selection available. The climate also ensures that the grapes that do grow in Minnesota are very acidic. If vineyards want to make wine with a variety of tastes, they often have to blend Minnesota grapes with out-of-state ones, a process that is limited by the state's 50 percent grape mandate.<sup>25</sup>

The state justifies its approach to farm wineries as part of an effort to "nurture grape growing and winemaking" in the state but in reality, they're doing the opposite by forcing Minnesota winemakers to make less-delicious wine.<sup>26</sup>

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<sup>24</sup> See, e.g., Minn. Stat. § 340A.101. Subd. 11.; and Megan Forbes, "Uncorking Economic Opportunity in Minnesota and Beyond," Institute for Justice, June 2017. Similar grape mandates for farm wineries exist in other states, as well. See those in: New York, Pennsylvania, New Jersey, Connecticut, Kansas, Nebraska, Arizona, Tennessee, Virginia, Rhode Island and Colorado.

<sup>25</sup> Ibid.

<sup>26</sup> Research Department, "Information Brief", Minnesota House of Representatives, June 2012.

<sup>27</sup> See Code of Virginia § 4.1-119.G.; and C. Jarrett Dieterle, "Welcome to Virginia, where the whiskey's strong but the government's stronger," R Street Blog, Aug. 11, 2016.

<sup>28</sup> Ibid.



3



## INDIANA'S WARM BEER LAW

In Indiana, it is illegal for convenience stores and gas stations to sell refrigerated beer.<sup>29</sup> Why, you ask? Well, because liquor stores *can* sell cold beer and they want to keep their monopoly.<sup>30</sup> Like many wacky booze rules, this law has its roots in the post-Prohibition era: in 1935, Indiana passed a liquor-control law that created various types of alcohol retailing licenses. Over time, these license categories evolved until liquor stores were able to exert their influence to gain the exclusive right to sell cold beer.<sup>31</sup>

The putative rationale for restricting cold beer sales is that it reduces underage access to booze, even though convenience stores and gas stations in other states across America have successfully trained their employees to check IDs for age-restricted purchases.<sup>32</sup> The efficacy of the law is just as suspect as its justification: convenience stores in the state have started selling cheap, reusable bags that chill beer in just 15 minutes<sup>33</sup>—which is clever but also unnecessarily raises the cost of beer for the average Hoosier.

So, unless you somehow *like* warm beer—said no one ever—it's best to avoid Indiana.

2

## NORTH CAROLINA TURNS HAPPY HOUR SAD

Do you like happy hour? Who doesn't? North Carolina regulators, that's who. In fact, they dislike it so much that for some reason, they decided it was a good idea to allow restaurants to offer happy hour deals ... but only for food.<sup>34</sup> Even more depressingly, the Tarheel State only allows restaurants to sell patrons one drink at a time, which means that the only way to legally order a pitcher of beer is for *two or more* people to order it.<sup>35</sup> If this sounds like the saddest happy hour ever—well, we think you're right!

Unfortunately, numerous other states similarly hate happy hour—Massachusetts also restricts it, while Virginia forbids restaurants to advertise happy hour specials.<sup>36</sup> Luckily, someone is finally fighting back against all this madness. The Pacific Legal Foundation recently launched a lawsuit challenging Virginia's happy hour advertising ban on First Amendment grounds.<sup>37</sup> After all, there's nothing more American than Free Speech and the right to discounted booze.

<sup>29</sup> See I.C. 7.1-3-1-1.5.; and Jarrett Dieterle, "Indiana Doubles Down on Warm Beer," *The American Conservative*, June 12, 2017.

<sup>30</sup> Tony Cook and Robert King, "A potent brew: Money, muscle and back-slapping protect liquor store grip on cold beer," *Indy Star*, Oct. 20, 2017.

<sup>31</sup> "Indiana Doubles Down on Warm Beer".

<sup>32</sup> *Ibid.*

<sup>33</sup> Niki Kelly, "Reusable Chill bag for beer helps convenience stores compete," *The Journal Gazette*, Aug. 30, 2018.

<sup>34</sup> "Happy Hour FAQs," North Carolina Alcoholic Beverage Control Commission.

<sup>35</sup> *Ibid.*

<sup>36</sup> National Center for State Courts, "Issue Brief 7: Happy Hour Laws," *Traffic Resource Center for Judges*, July 2014.

<sup>37</sup> Rachel Weiner, "Chef sues over Virginia's happy hour laws," *The Washington Post*, March 29, 2018.



# 1

## NATIVE AMERICANS CANNOT DISTILL

In 1834, Andrew Jackson signed a law banning distilleries on Native American lands.<sup>38</sup> During that time in American history, the condescending myth of the “drunken Indian” was pervasive and led to a whole host of paternalistic laws being implemented regarding tribal lands and booze. Apparently, our federal government still considers Native Americans second-class citizens because the law is still on the books.<sup>39</sup>

In 2015, the Confederated Tribes of the Chehalis Reservation in Washington State attempted to open a distillery on their land, only to be rebuffed. They and others have tried to pressure Congress to scrap this outdated and offensive law but, so far, to no avail.<sup>40</sup> While many of the laws on this list deserve our ire, this one stands alone for its general odiousness in treating people differently based on nothing more than their heritage and race. Until and unless this federal law is repealed, it is the clear winner for “Worst Booze Law in America.”

## CONCLUSION

And, there we have it! A 12-pack of the wackiest, most-ridiculous alcohol laws in America. In one way or another, all of these have nonsensical rationales—and, in some cases, downright offensive ones. While it’s to be expected that governments might want to institute at least some laws governing the sale and consumption of alcohol, the true goal should be to protect public health and safety. Too often, however, laws like the ones featured here use safety as a pretext, when, in fact, the real rationale is protectionism (or worse).

At the R Street Institute, we push for rational alcoholic-beverage policies that respect individual freedom, free enterprise and the public well-being. None of these laws further any of those goals, which is why they should be scrapped. And, if you think we simply cherry-picked the most egregious examples on the books to drum up outrage, you’re correct. The point is that these ridiculous laws are symptomatic of the broken regulatory system that currently governs alcohol. And, although these are only a few, there are many, many more head-scratching examples of bad booze law on the books. If highlighting the worst examples helps to start a conversation about how to create a better regulatory environment for alcohol, then we’ve accomplished our goal. Now, crack open another cider and let’s continue our effort to #FreeTheDrinks.

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<sup>38</sup> <http://uscode.house.gov/statviewer.htm?volume=4&page=732>.

<sup>39</sup> C. Jarrett Dieterle and Kevin Kosar, “Why Can’t Native Americans Make Whiskey?”, *The New York Times*, June 4, 2018.

<sup>40</sup> *Ibid.*

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