

HB 4368 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

House Bill No. 4368

(By Delegates Amores, Palumbo, Brown and Schadler)



Passed March 10, 2006

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 4368

(BY DELEGATES AMORES, PALUMBO, BROWN AND SCHADLER)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §60-8-18 of the Code of West Virginia, 1931, as amended, relating to the alleged violations of Alcohol Beverage Control Administration (ABCA) rules, orders and related code provisions by persons and entities holding licenses to sell or serve wine; clarifying the code provisions to clearly provide for the investigation of licensee's alleged violation of rules or orders issued by the ABCA Commissioner; and providing expanded alternative sanction options to the ABCC Commissioner for certain violations.

Be it enacted by the Legislature of West Virginia:

That §60-8-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

§60-8-18. Revocation, suspension and other sanctions which may be imposed by the Commissioner upon the licensee; procedure upon refusal, revocation, suspension or other sanction.

1 (a) The Commissioner may on his or her own motion, or
2 shall on the sworn complaint of any person, conduct an investi-
3 gation to determine if any provisions of this article or any rule
4 promulgated or any order issued by the Commissioner has been
5 violated by any licensee. After investigation, the Commissioner
6 may impose penalties and sanctions as set forth below.

7 (1) If the Commissioner finds that the licensee has violated
8 any provision of this article or any rule promulgated or order
9 issued by the Commissioner, or if the Commissioner finds the
10 existence of any ground on which a license could have been
11 refused, if the licensee were then applying for a license, the
12 Commissioner may:

13 (A) Revoke the licensee's license;

14 (B) Suspend the licensee's license for a period determined
15 by the Commissioner not to exceed twelve months; or

16 (C) Place the licensee on probation for a period not to
17 exceed twelve months; and,

18 (D) Impose a monetary penalty not to exceed one thousand
19 dollars for each violation where revocation is not imposed.

20 (2) If the Commissioner finds that a licensee has willfully
21 violated any provision of this article or any rule promulgated or
22 any order issued by the Commissioner, the Commissioner shall
23 revoke the licensee's license.

24 (b) If a distributor fails or refuses to keep in effect the bond
25 required by section twenty-nine of this article, the Commis-
26 sioner shall automatically suspend the distributor's license until
27 the bond required by section twenty is furnished to the Com-
28 missioner, at which time the Commissioner shall vacate the
29 suspension.

30 (c) Whenever the Commissioner refuses to issue a license,
31 or suspends or revokes a license, places a licensee on probation
32 or imposes a monetary penalty, he or she shall enter an order to
33 that effect, and cause a copy of the order to be served in person
34 or by certified mail, return receipt requested, on the licensee or
35 applicant.

36 (d) Any applicant or licensee, as the case may be, adversely
37 affected by the order has a right to a hearing before the Com-
38 missioner, a written demand for hearing is served upon the
39 Commissioner within ten days following the receipt of the
40 Commissioner's order by the applicant or licensee. Timely
41 service of a demand for a hearing upon the Commissioner
42 operates to suspend the execution of the order with respect to
43 which a hearing has been demanded, except an order suspend-
44 ing a license under the provisions of subsection (b) of this
45 section. The person demanding a hearing shall give security for
46 the cost of the hearing in a form and amount as the Commis-
47 sioner may reasonably require. If the person demanding the
48 hearing does not substantially prevail in such hearing or upon
49 judicial review thereof as provided in subsections (g) and (h) of
50 this section, then the costs of the hearing shall be assessed
51 against him or her by the Commissioner and may be collected
52 by an action at law or other proper remedy.

53 (e) Upon receipt of a timely served written demand for a
54 hearing, the Commissioner shall immediately set a date for the
55 hearing and notify the person demanding the hearing of the
56 date, time and place of the hearing, which shall be held within
57 thirty days after receipt of the demand. At the hearing the
58 Commissioner shall hear evidence and thereafter enter an order
59 supporting by findings of facts, affirming, modifying or
60 vacating the order. Any such order is final unless vacated or
61 modified upon judicial review thereof.

62 (f) The hearing and the administrative procedure prior to,
63 during and following the hearing shall be governed by and in
64 accordance with the provisions of article five, chapter
65 twenty-nine-a of this code.

66 (g) Any applicant or licensee adversely affected by an order
67 entered following a hearing has the right of judicial review of
68 the order in accordance with the provisions of section four,
69 article five, chapter twenty-nine-a of this code.

70 (h) The judgment of a circuit court reviewing the order of
71 the Commissioner is final unless reversed, vacated or modified
72 on appeal to the supreme court of appeals in accordance with
73 the provisions of section one, article six, chapter twenty-nine-a
74 of this code.

75 (I) Legal counsel and services for the Commissioner in all
76 proceedings in any circuit court and the Supreme Court of
77 Appeals shall be provided by the Attorney General or his or her
78 assistants and in any proceedings in any circuit court by the
79 prosecuting attorney of that county as well, all without addi-
80 tional compensation.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clay White
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Russell Elphus
Clerk of the Senate

Bruce D. Sawyer
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 4th.
day of April, 2006.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAR 22 2006

Time 3:45 PM