WEST VIRGINIA CODE CHAPTER 60 ARTICLE 6

WV Legislature

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee, or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

(3) The holder of a winery or a farm winery license from serving samples of its wine on the winery or the farm winery premises; and

(4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving samples of its alcoholic liquor on the distillery, mini-distillery, or micro-distillery premises.

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§60-6-2. When lawful to manufacture and sell wine and cider.

The provisions of this chapter may not prevent:

(1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by §60-6-1 of this code.

(2) A person from manufacturing and selling unfermented cider;

(3) A person from manufacturing and selling cider made from apples produced by him or her within this state to persons holding distillery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(4) A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons holding winery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(5) The holder of a winery or a farm winery license from selling wine for off-premises consumption sold at retail at the winery or the farm winery, as provided in §60-3B-4 of this code, or for any other person who is licensed under this chapter to sell wine as a wine supplier or distributor; and

(6) The holder of a distillery, mini-distillery, or micro-distillery license from selling alcoholic liquor for off-premises consumption sold at retail at the distillery, mini-distillery, or micro-distillery, as provided in §60-3A-4 of this code.

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§60-6-3. Applicability of chapter to certain uses of ethyl alcohol.

The provisions of this chapter relating to state monopoly shall not apply to ethyl alcohol used:

(1) For scientific, chemical, mechanical or industrial purposes;

(2) By those authorized to procure ethyl alcohol tax free under the acts of Congress and regulations thereunder;

(3) In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations thereunder;

(4) In the manufacture of scientific, chemical, mechanical and industrial preparations or products unfit for beverage purposes;

(5) By those authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use pursuant to section seven-a, article four of this chapter.

Nothing in this section shall be so construed as to exempt such users of ethyl alcohol from the license and transportation provisions of this chapter.

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§60-6-4. Permitted use by druggists.

The provisions of this chapter shall not prevent a person from manufacturing, selling, delivering or shipping:

Any medicine containing sufficient medication to prevent its use as a beverage;

Any medicinal preparation manufactured in accordance with formulas prescribed by the United States pharmacopoeia, and national formulary, patent and proprietary preparations, and other bona fide medical and technical preparations, which are manufactured and sold to be used exclusively as medicine and not as beverages, and the sale of which does not now require the payment of a United States liquor dealer's tax;

Toilet, medicinal and antiseptic preparations not intended for internal human use nor for beverage purposes;

Any food products known as flavoring extracts manufactured and sold for cooking and culinary purposes only and not for beverage purposes;

Nor shall such provisions prevent pharmacists, retail druggists or drugstores employing a duly licensed pharmacist, from purchasing or causing to be shipped to their place of business ethyl alcohol for use in compounding or manufacturing any of the medical or other preparations enumerated in this section, as provided in section six, article four of this chapter.

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§60-6-5. Applicability of chapter to certain uses by physicians, druggists and others.

The provisions of this chapter shall not prevent:

(1) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;

(2) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;

(3) A physician, dentist, or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;

(4) Hospitals, sanitariums, or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary, from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;

(5) Religious organizations from using wine for sacramental purposes.

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§60-6-6. Transporting alcoholic liquor in excess of ten gallons.

The provisions of this chapter shall not prevent a person from bringing into or transporting in this state, in his possession or in his baggage, and not for resale, alcoholic liquor in a quantity not to exceed ten gallons: Provided, That upon written permission of the commissioner, quantities of alcoholic liquor in excess of ten gallons may be transported within this state.

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§60-6-7. Specific acts forbidden; indictment.

A person shall not:

(1) Manufacture or sell in this state without a license any alcoholic liquor, except as permitted by this article;

(2) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by this article;

(3) Sell or tender without a license any alcoholic liquor other than permitted by this article;

(4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

(5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;

(6) Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commissioner; or

(7) Distribute, deal in, process, or use crowns, stamps, or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the commissioner; or

(8) Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship, use, or in any other manner provide or furnish powdered alcohol.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 nor more than $500, or confined in jail not less than 30 days nor more than one year or both such fine and imprisonment, for the first offense. Upon conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in the penitentiary for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

An indictment for any first violation of subdivisions (1), (2), and (3) of this section, or any of them, shall be sufficient if in form or effect as follows:

State of West Virginia

County of ....., to wit:

The Grand Jurors of the State of West Virginia, in and for the body of the County of .....,

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upon their oaths present that ....., on the ..... day of ....., 20...., in the said County of ....., did unlawfully, without a State license and without authorization under the Alcohol Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a quantity of alcoholic liquor, against the peace and dignity of the state.

Any indictment under this section shall otherwise be in conformity with §62-9-1 et seq. of this code.

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§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which the license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture of the wine under rules of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by its license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with the commissioner and has paid a $1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by the private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and the liquor bottle shall be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless the licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: *Provided,* That a licensee may sell, furnish, tender, and serve up to 15 recipes of pre-mixed beverages consisting of alcoholic liquors and nonalcoholic mixer, in a manner approved by the commissioner and in accord with public health and safety standards:

(A) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(B) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made; and

(C) The licensee shall maintain a written record reflecting the cleaning and sanitizing of the

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storage and dispensing equipment for inspection by the commissioner and health inspectors;

(D) A violation or violations this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under this chapter or §11-16-1 *et seq*. of this code;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not less than 30 days nor more than one year, or both fined and confined for the first offense. Upon conviction of a second or subsequent offense, the court may impose a penalty of imprisonment in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

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§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person may not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Tender a drink of alcoholic liquor to another person in a public place;

(4) Operate a business without a license issued under §60-1-1 et seq. of this code which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice, and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a "bring your own bottle", "bring your own booze", or "BYOB" establishments;

(5) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of a citation, transport the individual to the individual's present residence, or arrange for the transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

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(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;

(2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested, or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than $5 nor more than $100. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours' duration at the nearest community mental health – mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than $5 nor more than $100 and not more than 60 days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health – mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than $5 nor more than $100 and not less than five nor more than 60 days in jail or a fine of not less than $5 nor more than $100 and completion of not less than five hours of alcoholism counseling at the nearest community mental health – mental retardation center: *Provided*, That three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health – mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to

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complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100; and upon a second or subsequent conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than $100 nor more than $500; and upon conviction of second or subsequent offense, he or she is guilty of a felony and, shall be confined in a state correctional facility for a period of not less than one year nor more than three years.

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§60-6-10. Unlawful operation of plant manufacturing distilled spirits; exception for personal consumption.

(a) A person who unlawfully owns, operates, or maintains a plant for the manufacture of distilled spirits, or aids or abets in the operation or maintenance of such a plant shall be guilty of a felony and, upon conviction shall be fined not less than $100 nor more than $1,000 or confined in the penitentiary not less than one nor more than five years.

(b) Notwithstanding the restriction of subsection (a) of this section, a person at least 21 years of age may manufacture alcoholic liquor for personal or family use. The aggregate amount of alcoholic liquor manufactured per household may not exceed 10 gallons per calendar year, if there are two or more persons over the age of 21 years, or 5 gallons per calendar year, if there is only one person over the age of 21 years in the household. Any alcoholic liquor manufactured under this section may not be sold or offered for sale.

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§60-6-11. Unlawful manufacture, etc., while armed.

A person who, while engaged in the unlawful manufacture, transportation or sale of alcoholic liquors, or while aiding or assisting in any of such acts, has in his actual or constructive possession a firearm or other lethal weapon, shall be guilty of a felony and, upon conviction shall be confined in the penitentiary not less than one nor more than ten years.

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§60-6-12. Transportation of alcoholic liquors into or through state; permits; bond of permittee.

The commission may adopt regulations governing the transportation of alcoholic liquors, lawfully acquired, within, into or through the state in quantities in excess of one gallon as it may deem necessary to confine such transportation to legitimate purposes and may issue transportation permits in accordance with such regulations, collect a fee therefor, and shall require each person to whom such a permit is issued to furnish a bond in such form and amount and with such surety as the commission shall direct, conditioned that he will exercise the privileges granted by such permit in conformity with the provisions of this chapter and the regulations of the commission, or in default thereof forfeit to the state school fund the sum of $100 for each breach recoverable by motion upon ten days' notice in any court having jurisdiction of the parties.

A person who, without authorization under this chapter, transports alcoholic liquors in quantities in excess of one gallon or in any amount for the purpose of sale or in any amount manufactured or acquired contrary to the provisions of this chapter, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than one hundred nor more than $500, or confined in jail not to exceed one year, or both such fine and imprisonment for the first offense. Upon conviction of a second or subsequent offense, he shall be guilty of a felony and, confined in the penitentiary of this state for a period of not less than one nor more than three years.

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§60-6-13. Restrictions on importing into, and transporting liquors in state.

Except as permitted by section six of this article and article eight of this chapter, a person shall not import into, or transport in this state, any alcoholic liquors, unless it is:

(1) Consigned to the commission;

(2) Transported upon the direction of the commission directly to persons licensed to receive alcoholic liquors at wholesale; or

(3) Transported into the state or through the state to persons outside the state upon transportation permits issued by the commissioner.

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§60-6-14.

Repealed.

Acts, 1937 Reg. Sess., Ch. 14.

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§60-6-15. Penalties for violations not otherwise specified.

A person who violates any order, rule or regulation of the commission made under the authority of this chapter, or who violates any provisions of this chapter for which punishment has not been specifically provided, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $10 nor more than $500 or confined in jail not less than five days nor more than six months, or by both such fine and imprisonment.

If, by the provisions of this chapter, conflicting penalties are prescribed for an offense, the section providing for the heavier penalty shall control.

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§60-6-16. Places deemed common and public nuisances; abatement; conspiracy.

A place where alcoholic liquor is manufactured, sold, stored, possessed, given away, or furnished contrary to law shall be deemed a common and public nuisance. Boats, cars (including railroad and traction passenger cars operating in this state), automobiles, wagons, water and aircraft, beasts of burden, or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of section seventeen of this article. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common and public nuisance shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500, or by confinement in jail not less than sixty days nor more than six months for each offense, and judgment shall be given that such nuisance be abated or closed as a place for the manufacture, sale, storage, possession, giving away, or furnishing contrary to law of alcoholic liquor, as the court may determine.

If two or more persons conspire to maintain such common and public nuisance or to distill, manufacture, store, transport, sell, give away, or furnish alcoholic liquor in violation of any of the provisions of this chapter, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500 or by confinement in jail for not less than one month nor more than six months, or in the discretion of the court, by both such fine and imprisonment.

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§60-6-17. Suit to abate nuisances; injunction.

The commission, its agents, the Attorney General, the prosecuting attorney, or a citizen of the county or municipality where a nuisance as defined in section sixteen of this article is located, may maintain a suit in equity in the name of the state to abate and perpetually enjoin the same. Courts of equity shall have jurisdiction thereof. The injunction may be granted at the commencement of the suit and no bond shall be required. On the finding that the material allegations of the bill are true, the court or judge thereof in vacation shall order the injunction for such period of time as it or he may think proper, with the right to dissolve the injunction upon the application of the owner of the place, if a proper case is shown for such dissolution.

The continuance of the injunction as provided in this section may be ordered, although the place complained of may not at the time of hearing be unlawfully used.

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§60-6-18. Search warrants.

If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that alcoholic liquors are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place in violation of law, the justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic liquors. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants.

Warrants issued under this chapter for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for alcoholic liquor, may be executed in any part of the state where the same are overtaken, and shall be made returnable before any justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported contrary to law.

An officer charged with the execution of a warrant issued under this section, may, whenever it is necessary, break open and enter a house, or other place herein described.

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§60-6-19. Forfeiture of stills, etc.

All stills and distilling apparatus and material for the manufacture of the same, and all alcoholic liquors, and materials used in the manufacture of alcoholic liquors, and all containers in which alcoholic liquors may be found, which are kept, stored, possessed or in any manner used in violation of the provisions of this chapter shall be deemed contraband and shall be forfeited to the state.

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§60-6-20. Contraband conveyances; forfeiture and disposition.

A conveyance of any kind, either on land, water, or in the air, used for transportation of alcoholic liquors in violation of section twelve of this article, shall be deemed contraband and shall be forfeited to the state and proceeded against in the manner provided for confiscation by section twenty-one of this article.

Any such conveyance forfeited to the state under the provisions of this section shall be turned over to the commission, which may retain the same for public use in the administration and enforcement of this chapter. If it has no need for the conveyance, it may order its destruction or sale unless the department of public safety requests it, in which case the commission shall turn it over to the said department.

The net proceeds of sales made under this section shall be paid into the State Treasury in the manner prescribed for receipts from state stores and agencies.

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§60-6-21. Court procedure as to contraband and forfeited articles.

Proceedings for confiscation of articles, conveyances or vehicles declared contraband and forfeited to the state under section twenty shall be had in the circuit or inferior court having criminal jurisdiction, either in vacation or term time, in the county where such articles, conveyances or vehicles were seized, and the procedure shall be as follows:

(1) When such articles, conveyances or vehicles have been seized under or without a warrant provided for in section eighteen of this article, by an officer charged with the enforcement of this chapter, the officer shall take possession of such article, conveyance or vehicle and deliver the same and the alcoholic liquors so seized to the sheriff of the county in which such seizure was made, taking his receipt therefor in duplicate.

(2) The officer making such seizure shall forthwith report in writing of such seizure to the prosecuting attorney of the county in which such seizure was made and to the commission.

(3) Within not less than ten days nor more than sixty days after receiving notice of any such seizure, the prosecuting attorney for the county shall file, in the name of the state, a petition against the seized property, in the clerk's office of the circuit court of the county, returnable to the circuit court or inferior court having criminal jurisdiction, which petition shall be filed by the clerk without fee and may be heard by said court or judge thereof in vacation.

(4) Such petition shall allege the seizure, and set forth in general terms, the grounds of forfeiture of the seized property, and shall pray that the same be forfeited to the state and the proceeds disposed of according to law, and that all persons concerned or interested may appear and show cause why said property should not be forfeited to the state.

(5) The owner of and all persons in any manner then indebted or liable for the purchase price of said property, and any person having a lien thereon, if they be known to the prosecuting attorney, shall be made parties defendant thereto, and shall be served with the notice issued by the clerk of such court, hereinafter provided for in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on said petition, if they be residents of this state, and, if they be unknown or nonresidents, or cannot with reasonable diligence be found in this state, they shall be deemed sufficiently served by publication of said notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be said county.

(6) Any person claiming to be the owner of such seized property, or to hold a lien thereon or have an interest therein, may appear at any time before final judgment of the trial court, and be made a party defendant to the petition so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim or interest.

(7) If the court or judge thereof in vacation shall find that illegally acquired alcoholic liquors

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or alcoholic liquors being illegally transported in amounts in excess of one gallon, were not found in such conveyance or vehicle at the time of the seizure thereof, the judgment of the court shall be to entirely relieve said property from forfeiture, and no costs shall be taxed against such claimant.

(8) If the court or judge thereof in vacation trying the issue shall find or if it be admitted that said conveyance or vehicle at the time of the seizure contained illegally acquired liquor or that alcoholic liquors were being illegally transported therein, nevertheless:

(a) If it shall appear to the satisfaction of the court that such claimant is the bona fide owner and was such owner at the time of such seizure and that he was ignorant of such illegal use thereof and the illegal use was without his connivance or consent, expressed or implied, the court shall relieve said conveyance or vehicle from forfeiture and restore it to such claimant and no cost shall be taxed against such claimant,

(b) If it shall appear to the satisfaction of the court that such claimant is the holder of a bona fide lien against the property and was the holder of such lien at the time of such seizure and that he was ignorant of such illegal use thereof, or the use so made of such conveyance or vehicle was without his connivance or consent, expressed or implied, and that the claimant has perfected his lien, the court shall,

(1) If the lien so established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor upon the payment of storage and cost,

(2) If the lien is less than the value of the conveyance or vehicle, the lienor may have said conveyance or vehicle delivered to him upon payment of the difference in amount as determined in such proceedings; but should the lienor not demand delivery as aforesaid, an order shall be made for the sale of said property by the sheriff of the county, in the manner prescribed by law for sale of personal property under execution, out of the proceeds of which sale shall be paid, first, the storage, if any, second, the cost, third, the lien, and the residue, if any, shall be paid to the commission.

(9) If, however, no valid lien or claim is established against the seized property upon the trial of the petition, or, if it shall be determined that the owner thereof was himself using the same at the time of the seizure or that such illegal use was with his knowledge or consent, expressed or implied, the said property shall be completely forfeited to the state and turned over to the commission in accordance with the provisions of this chapter.

(10) In every case, the alcoholic liquors so seized shall be deemed contraband and forfeited to the state as heretofore provided.

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§60-6-22. Action to recover price of liquors sold unlawfully.

No action shall be maintained to recover the price of alcoholic liquor sold in violation of the provisions of this chapter, except that the state or the commission may recover from any person the price of any alcoholic liquor purchased by him in violation of this chapter, and from any person who may have sold alcoholic liquors in violation of the provisions of this chapter, the consideration received by him therefor.

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§60-6-23. Treatment of minors for addiction to alcoholic liquor and beer.

Notwithstanding any other law to the contrary, any licensed physician may examine, counsel, diagnose and treat any minor at his or her request for any addiction to or dependency upon the use of alcoholic liquor or nonintoxicating beer, as defined in section five, article one of this chapter, without the knowledge or consent of the minor's parent or guardian. Such physicians shall not incur any civil or criminal liability in connection therewith except for negligence or willful injury.

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§60-6-24. Requirement for posting informational sign.

Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine, hard cider, nonintoxicating beer or nonintoxicating craft beer for either on-premises or off-premises consumption, shall post in an open and prominent place within the establishment, a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, as provided in the chart available on the commissioner's website. Enforcement of the posting provisions of this section shall be carried out by the commissioner for all licensees required to post the notice.

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§60-6-25. Mandatory signs to be posted warning of the possible dangers of consumption of alcohol during pregnancy.

(a) Beginning July 1, 1998, all persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail, either for consumption on-premises or off-premises, or both, shall display signs provided by the Alcohol Beverage Control Commissioner warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy. These signs shall be displayed upon the licensed premises in the following manner:

(1) If a licensee holds a license providing for the retail sale of alcoholic liquor, wine or nonintoxicating beer for on-premises consumption, the sign shall be posted in an open and prominent place in the licensed portion of the establishment: Provided, That self-service "mini-bars" in hotel guest rooms are exempt: Provided, however, That airports, convention centers, sports facilities and other licensed premises with more than one authorized location of sales, service and consumption shall post signs in plain view to the majority of patrons entering or approaching the licensed portion of the premises.

(2) If the licensee holds a license providing for the retail sale of alcoholic liquor, wine or nonintoxicating beer for off-premises consumption, the sign shall be posted in plain view at the main entrance to the licensed premises.

(3) If the licensee is a liquor manufacturer, the notices shall be posted in plain view at the main entrance to areas where alcohol is sold for off-premises consumption. If a manufacturer's tasting rooms have separate buildings or separate entrances, the sign shall be posted in plain view at the main entrance to the tasting area.

(b) The Alcohol Beverage Control Commissioner shall make signs and replacements warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy available to each licensee governed by the provisions of this section.

(c)(1) Upon a determination by the commissioner that a licensee has failed to comply with the provisions of this section, the commissioner may impose a civil administrative penalty of not less than $100 nor more than $1,000 for each violation. The provisions of section fifteen of this article shall not apply to a violation of this section.

(2) The commissioner shall propose legislative rules for promulgation pursuant to the provisions of chapter twenty-nine-a of this code setting forth:

(A) Objective criteria against which the exercise of the commissioner's discretion in the determination of whether to impose a civil administrative penalty is to be measured; and

(B) Procedures meeting the requirements of due process through which an alleged violation of this section may be contested.

(3) The proceeds of civil administrative penalties collected for violations of this section shall

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be deposited in a fund hereby established in the State Treasury to be known as the "fetal alcohol syndrome fund". The commissioner shall expend the moneys deposited in the fund to educate the public concerning the dangers of fetal alcohol syndrome without appropriation except as provided in this subsection. After the sum of $5,000 has been deposited into the fund during a fiscal year, any additional deposits shall be divided as follows: (1) An amount necessary to allow the commissioner to carry out his or her duties pursuant to this section, not to exceed one half of such additional deposits, shall be deposited in the alcohol beverage control administration fund; and (2) the remainder of such additional deposits shall be made to the state fund, general revenue. Any moneys remaining in the fund on June 30 of each year shall be subject to reappropriation for expenditure during the following fiscal year. The commissioner shall annually file a report with the President of the Senate and the Speaker of the House of Delegates, informing the Legislature as to the amounts deposited in the funds, and the purposes for which the amounts deposited in the alcohol beverage control administration fund were expended.

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§60-6-26. Conditional discharge for first offense of certain offenses related to nonintoxicating beer or alcoholic liquor.

(a) When a person pleads guilty to or is found guilty of a violation of subdivision (1), subsection (a), section nineteen, article sixteen, chapter eleven of this code; subsection (b), section nineteen, article sixteen, chapter eleven of this code; subsection (a), section twenty-two-a, article three of this chapter; subdivision (1), subsection (a), section twenty-four, article three-a of this chapter; subsection (b), section twenty-four, article three-a of this chapter; subsection (a) or (b), section twelve-a, article seven of this chapter; or subsection (a) or (b), section twenty-a, article eight of this chapter, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions it considers appropriate, if the person has not previously been convicted of:

(1) Any of the offenses contained in the code provisions referenced in this subsection; or

(2) Any statute of the United States or of any state relating to underage purchase, consumption, sale, service or possession of nonintoxicating beer or alcoholic liquor.

(b) If the person violates a term or condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

(c) Upon fulfillment of the terms and conditions of the probation, the court shall discharge the person and dismiss the proceedings against him or her.

(1) Discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or the section of the original charge, or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(2) The effect of the discharge and dismissal is to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial.

(3) A person to whom a discharge and dismissal have been effected under this section may not be found guilty of perjury, false swearing or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial relating to a charge discharged and dismissed by this section in response to any inquiry made of him or her for any purpose.

(d) There may be only one discharge and dismissal under this section with respect to any one person.

(e) After a period of not less than six months after the expiration of a term of probation imposed upon a person under the provisions of this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial and discharge pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period prior to his or her

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application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(f) Notwithstanding any provision of this code to the contrary, any person prosecuted for an alleged violation of an offense listed in subsection (a) of this section, whose case is disposed of pursuant to the provisions of this section, is liable for all court costs assessable against a person convicted of a violation of the section under which the person was prosecuted. Payment of the costs may be made a condition of probation. The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty of this code; section four, article two-a, chapter fourteen of this code; section four, article twenty-nine, chapter thirty of this code; and sections two, seven and ten, article five, chapter sixty-two of this code.

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