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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

ENROLLED

Committee Substitute for

SENATE BILL NO. 280

(By Mr. *Boettner, Mr. Kusic & Mr. Rogers*)

PASSED March 3, 1979

In Effect ninety days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 280

(MR. BOETTNER, MR. KUSIC and MR. ROGERS, *original sponsors*)

[Passed March 3, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article one; sections one and nine-d, article three; and section thirteen, article six, all of chapter sixty of said code; and to further amend said chapter sixty by adding thereto a new article, designated article eight, all relating to permitting the retail sale of wine to the public by private licensee; providing definitions; requiring license for distributor and retailer; establishing fees for such licenses; providing restrictions upon eligibility for licenses; levying and imposing a gallonage tax; imposing or authorizing a tax for the benefit of counties and municipalities; requiring reports of sales and return of tax; providing for refund or credit of taxes; imposing restrictions, registration and reporting requirements on persons selling or shipping wine into this state; penalty for violation by such persons; requiring preservation of records and authorizing the alcohol beverage control commissioner to inspect and examine records and persons; providing for assessments of tax; jeopardy assessments; interest; providing penalties for insufficient and fraudulent returns or failure to file; providing for notices, hearings and appeals on assessments; authorizing commissioner to collect taxes by distraint, action or suit; providing for creation of lien against taxpayer's property; requiring registration of label and establishing registration fee; regulating relationships

between licensees; prohibiting discrimination by distributors; prohibiting distributors from selling wine on credit; prescribing unlawful acts generally; prescribing criminal penalties for violations of article and for making false statements; requiring application for license; prescribing contents and requiring verification of application; requiring bond of distributor; prescribing procedure upon submission of application; prohibiting transfer of license; duties and powers of commissioner; promulgation of rules and regulations; subpoena power; procedure on revocation or suspension of license; hearing; review; providing for forfeiture of bond of distributor; providing for disposition of fees and taxes collected by commissioner; providing for local option election in county or municipality upon petition; form of petition; notice of election; form of ballot; and how conducted and results certified.

Be it enacted by the Legislature of West Virginia:

That section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article one; sections one and nine-d, article three; and section thirteen, article six, all of chapter sixty, be amended and reenacted; and that said chapter sixty be further amended by adding thereto a new article, designated article eight, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

1 Every municipality shall have plenary power and
2 authority to levy and collect a tax upon all purchases
3 within such municipality of intoxicating liquors from
4 the alcohol beverage control commissioner or from any
5 person licensed to sell wine at retail to the public under
6 the provisions of article eight, chapter sixty of this
7 code: *Provided*, That no municipality shall have au-
8 thority to levy or collect any such tax on the intox-
9 icating liquors sold by or purchased from holders of a
10 license issued under the provisions of article seven,

11 chapter sixty of this code. The tax shall be levied upon
12 the purchaser and shall be added to and collected with
13 the price of purchase. The tax shall not exceed three
14 percent of the purchase price.

15 A copy of any ordinance imposing the tax authorized
16 by this section shall be certified by the mayor of the
17 municipality to the West Virginia alcohol beverage con-
18 trol commissioner and to the tax commissioner. The
19 West Virginia alcohol beverage control commissioner
20 by appropriate rules and regulations shall provide for
21 the collection of such tax upon all purchases within such
22 municipality of intoxicating liquors from the alcohol
23 beverage control commission and for distribution
24 thereof to the respective municipalities for which the
25 same shall be collected. Such rules and regulations
26 shall provide that all such taxes shall be deposited with
27 the state treasurer and distributed quarterly by the
28 treasurer upon warrants of the auditor payable to the
29 municipality.

30 Every municipality shall have plenary power and
31 authority to levy and collect a fee from any private club
32 licensee whose premises are situate therein, as author-
33 ized in section seven, article seven, chapter sixty of this
34 code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-4. Sales to be made by or through West Virginia alcohol
beverage control commissioner; exceptions.

1 Alcoholic liquors shall be sold at wholesale and retail
2 in this state only by or through the West Virginia alcohol
3 beverage control commissioner or retail agencies estab-
4 lished by him or any predecessor commissioners or com-
5 mission, except as authorized by articles seven and eight
6 of this chapter.

ARTICLE 3. SALES BY COMMISSIONER.

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

1 The sale of alcoholic liquors at wholesale and retail
2 in this state is a state monopoly, except for sales made

3 by authority of articles seven and eight of this chapter,
4 unless prohibited by local election pursuant to article
5 eight of this chapter.

**§60-3-9d. Tax on purchases of intoxicating liquors outside
corporate limits of municipalities; limitation; rate
of tax; collection and distribution.**

1 For the purpose of providing financial assistance to
2 and for the use and benefit of the various counties and
3 municipalities of this state, there is hereby levied a tax
4 upon all purchases outside the corporate limits of any
5 municipality of intoxicating liquor from state stores or
6 other agencies of the alcohol beverage control commis-
7 sioner and of wine from any person licensed to sell wine
8 at retail under the provisions of article eight, chapter
9 sixty of this code. The tax shall be three percent of the
10 purchase price and shall be added to and collected with
11 the purchase price by the commissioner or by the person
12 so licensed to sell wine: *Provided*, That no such tax
13 shall be collected on the intoxicating liquors sold by or
14 purchased from holders of a license issued under the
15 provisions of article seven of this chapter.

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

27 The West Virginia alcohol beverage control commis-
28 sioner by appropriate rules and regulations shall provide
29 for the collection of such tax upon all purchases outside
30 the corporate limits of any municipality of intoxicating
31 liquor from state stores or other agencies of the alcohol
32 beverage control commissioner, separation or proration
33 of the same and distribution thereof to the respective
34 counties and municipalities for which the same shall be

35 collected. The tax commissioner by appropriate rules
 36 and regulations shall provide for the collection of such
 37 tax upon all purchases outside the corporate limits of
 38 any municipality of wine from any person licensed to
 39 sell wine at retail under the provisions of article eight,
 40 chapter sixty of this code, separation or proration of the
 41 same and distribution thereof to the respective counties
 42 and municipalities for which the same shall be collected.
 43 Such rules and regulations shall provide that all such
 44 taxes shall be deposited with the state treasurer and
 45 distributed quarterly by the treasurer upon warrants of
 46 the auditor payable to the counties and municipalities.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

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

5 (1) Consigned to the commission;

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

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

ARTICLE 8. SALE OF WINE.

§60-8-1. Definitions.

1 Unless the context in which used clearly requires a
 2 different meaning, as used in this article:

3 "Commissioner" means the West Virginia alcohol bev-
 4 erage control commissioner.

5 "Distributor" means any person whose principal place
 6 of business is within the state of West Virginia, and who
 7 is engaged in selling or distributing wine to retailers
 8 under authority of this article.

9 "Grocery store" means any retail establishment com-
 10 monly known as a grocery store, supermarket or deli-

11 catessen, where food or food products are sold for con-
12 sumption off the premises.

13 "Licensee" means the holder of a license granted under
14 the provisions of this article.

15 "Retailer" means any person licensed to sell wine at
16 retail to the public at his established place of business
17 under authority of this article.

18 "Tax" includes, within its meaning, interest, additions
19 to tax and penalties.

20 "Taxpayer" means any person liable for any tax, in-
21 terest, additions to tax or penalty under the provisions
22 of this article and any person claiming a refund of tax.

§60-8-2. Licenses; fees; general restrictions.

1 No person may engage in business in the capacity of
2 a distributor or retailer without first obtaining a license
3 from the commissioner, nor shall a person continue to
4 engage in any such activity after his license has ex-
5 pired, been suspended or revoked. No person may be
6 licensed in more than one of such capacities at the same
7 time.

8 The commissioner shall collect an annual fee for li-
9 censes issued under this article as follows:

10 (a) Twenty-five hundred dollars per year for a dis-
11 tributor's license.

12 (b) One hundred fifty dollars per year for a retailer's
13 license.

14 The license period shall begin on the first day of July
15 of each year and end on the thirtieth day of June of the
16 following year, and if the initial license is granted for
17 less than a year, the fee shall be computed in proportion
18 to the number of quarters remaining in the fiscal year,
19 including the quarter in which application is made.

20 No retailer may be licensed as a private club as pro-
21 vided by article seven of this chapter or as a Class A
22 retail dealer in nonintoxicating beer as provided by
23 article sixteen, chapter eleven of this code. A retailer
24 who has more than one place of retail business shall
25 obtain a license for each separate retail establishment.

26 A retailer's license may be issued only to the proprietor
27 or owner of a bona fide grocery store.

§60-8-3. Gallonage tax; reports by distributors; payment of tax.

1 There is hereby levied and imposed on all wine sold
2 by distributors to retailers a tax of fifty cents per gallon
3 (and in like ratio on other volumes) on all wine con-
4 taining fourteen percent or less alcohol by volume, and
5 seventy cents per gallon (and in like ratio on other vol-
6 umes) on all wine containing more than fourteen percent
7 alcohol by volume. No wine imported, sold or dis-
8 tributed in this state shall be subject to more than
9 one gallonage tax.

10 The retailer shall pay to the distributor the amount
11 of tax imposed by this article which shall be added to
12 and constitute part of the sales price, and shall be col-
13 lectible as such by the distributor. Before the sixteenth
14 day of each month during the license period, every dis-
15 tributor shall make a written report, under oath, to
16 the commissioner showing the quantity, label and alco-
17 holic content of wine sold and purchased by the dis-
18 tributor during the preceding month, and at the same
19 time shall pay the tax imposed by this article on the
20 wine sold during the preceding month. The report shall
21 contain other information and be in the form the com-
22 missioner may require. For purposes of this article, the
23 reports required by this section shall be considered tax
24 returns.

§60-8-4. Refund or credit of taxes.

1 The commissioner shall refund, or credit on a sub-
2 sequent return, any tax which has been erroneously or
3 illegally collected. In the event that a licensee, while
4 the owner of wine on which the tax imposed by this
5 article has been paid, loses such wine through fire or
6 casualty or because such wine has been declared by
7 the commissioner to be unfit for sale, and the amount
8 of tax paid exceeds fifty dollars, the commissioner shall
9 refund the tax paid. The commissioner shall promulgate
10 regulations establishing the procedure and nature of
11 proof required in case of any claim for refund or credit.

§60-8-5. Restrictions on persons selling or shipping wine to distributors; registration and reporting requirements; penalty for violation.

1 No person may offer for sale or sell wine in this
2 state, or offer wine for shipment into this state, except
3 to a distributor who is duly licensed under this article.
4 Every person, whether resident or nonresident in this
5 state, who is engaged in or desires to engage in the sale
6 or shipment of wine to a distributor for resale under this
7 article shall, prior to engaging in such activities, regis-
8 ter with the commissioner. Before the sixteenth day
9 of each month, every such person shall make a written
10 report, under oath, to the commissioner showing all
11 sales, shipments and deliveries of wine made to dis-
12 tributors during the preceding month. The report shall
13 state the identity of the purchaser, the quantity, label
14 and alcoholic content of the wine, and shall be in the
15 form and contain other information the commissioner
16 may require. If any such person violates the provisions
17 of this article, he shall not be permitted to sell, ship or
18 deliver any wine to a distributor or to the commissioner,
19 or otherwise engage in the wine business in this state
20 for a period of one year from the date a notice is mailed
21 to such person by the commissioner of the fact that such
22 person has violated the provisions of this article. During
23 such one-year period, it shall be unlawful for any dis-
24 tributor within this state to buy or receive wine from
25 such person or to have any dealings with such person
26 with respect thereto. Hearings and appeals on such
27 notices may be had in the same manner as in the case of
28 revocations of licenses under this article.

§60-8-6. Recordkeeping requirements; authority of commissioner to inspect and examine records and persons.

1 Every person who sells or ships wine to a distributor,
2 and every distributor, shall maintain records of all sales,
3 shipments and deliveries, including invoices, records,
4 receipts, bills of lading and other pertinent papers re-
5 quired by the commissioner. All such records shall be
6 preserved for at least two years. The commissioner may
7 inspect the books, accounts and records of any licensee

8 and examine, under oath, any officer, agent or employee
 9 of any licensee or any person engaged in the business of
 10 selling, shipping or delivering wine to a distributor. The
 11 commissioner may require the production, within this
 12 state at the time and place he may designate, of any
 13 books, accounts, papers or records kept within or without
 14 the state, or verified copies in lieu thereof, in order that
 15 an examination thereof may be made by the commis-
 16 sioner or his duly designated agents.

§60-8-7. Assessment of tax when insufficiently returned.

1 If the commissioner believes that the tax imposed by
 2 this article is insufficiently returned by a taxpayer, either
 3 because the taxpayer has failed to properly remit the
 4 tax or has failed to make a return, or has made a return
 5 which is incomplete, deficient or otherwise erroneous
 6 or a person has filed and has been paid upon an erroneous
 7 claim, petition, or application for a refund of taxes, he
 8 may proceed to investigate and determine or estimate
 9 the tax liability of the taxpayer and make an assessment
 10 therefor.

§60-8-8. Jeopardy assessments.

1 If the commissioner believes that the collection of any
 2 tax which he is required to administer will be jeopardized
 3 by delay, he shall thereupon make an assessment of tax,
 4 noting that fact upon the assessment. The amount
 5 assessed shall be immediately due and payable. Unless
 6 the taxpayer against whom a jeopardy assessment is
 7 made petitions for reassessment within twenty days after
 8 service of notice of the jeopardy assessment, such an
 9 assessment is final. A petition for reassessment by a
 10 person against whom a jeopardy assessment has been
 11 made must be accompanied by security the commissioner
 12 deems necessary to insure compliance with this article.

**§60-8-9. Interest; additions to tax; penalties; fraudulent re-
 turns; willful failure to file.**

1 (1) *Interest.*—The tax imposed by this article, if not
 2 paid when due, shall bear interest at the rate of six
 3 percent per annum from the due date of the return. Each

4 assessment or deficiency notice made by the commis-
5 sioner shall bear interest at the rate of six percent per
6 annum. In all cases of delinquency or extensions of time,
7 interest shall be assessed and collected.

8 (2) *Additions to tax; penalty.*—In the case of any
9 failure to make or file a return or whenever the full
10 amount of the tax or any portion or deficiency thereof
11 has not been paid, as required by this article, unless it
12 be shown that such failure is due to reasonable cause
13 and not due to willful neglect, there may be added to the
14 tax five percent if a failure is for not more than thirty
15 days, with an additional five percent for each additional
16 thirty days or fraction thereof during which failure shall
17 continue, not to exceed twenty-five percent in the aggre-
18 gate. If no tax is due, the penalty shall be twenty-five
19 dollars per month or fraction thereof for failure to file
20 a tax return.

21 (3) *Fraudulent returns; willful failure to file.*—In
22 the case of the filing of any false or fraudulent return
23 with intent to evade the tax imposed by this article, or
24 in the case of a willful failure to file a return with intent
25 to evade the tax, or the filing of a false claim for credit
26 or refund, there shall be added to the tax due a penalty
27 in an amount equal to one hundred percent of the tax
28 due. The burden of proving fraud, willfulness, or intent
29 to evade tax shall be upon the commissioner.

§60-8-10. Notice of assessment; petition for reassessment.

1 The commissioner shall give to the taxpayer written
2 notice of any assessment made pursuant to this article.
3 Unless the taxpayer to whom a notice of assessment is
4 directed shall, within thirty days after service thereof
5 (twenty days in the case of jeopardy assessments), either
6 personally or by certified mail, file with the commissioner
7 a petition in writing, verified under oath by said taxpayer
8 or his duly authorized agent having knowledge of the
9 facts, setting forth with particularity the items of the
10 assessment objected to, together with the reasons for
11 objections, said assessment shall become final and con-
12 clusive, not subject to administrative or judicial review,

13 and the amount thereof shall be payable at the end of
 14 the thirty-day period (twenty days in the case of a
 15 jeopardy assessment). A petition for reassessment shall
 16 be deemed to be timely filed if the postmark date thereon
 17 is clearly within said thirty days (twenty days in case
 18 of jeopardy assessment) of receipt of said assessment by
 19 the taxpayer or is received within such period.

§60-8-11. Hearings; appeals.

1 In every case when a petition for reassessment is filed,
 2 the commissioner shall assign a time and place for the
 3 hearing of same and shall notify the petitioner of such
 4 hearing by written notice at least twenty days in advance
 5 thereof. Such hearing shall be held within sixty days
 6 from the filing of the petition for reassessment unless
 7 continued by agreement or by the commissioner for good
 8 cause. The hearing shall be informal and may be con-
 9 ducted by an examiner designated by the commissioner.
 10 At such hearing, the assessment shall constitute prima
 11 facie evidence of the claim of the state and the burden
 12 of proof shall be upon the taxpayer assessed to show that
 13 the assessment is incorrect and contrary to law. In every
 14 case where a petition or request for refund as above
 15 described is filed and the commissioner has refused to
 16 allow said refund in whole or in part, the petitioner may
 17 file within thirty days after receipt of the commissioner's
 18 decision a written request for hearing. In every case
 19 where a request for hearing is filed, the commissioner
 20 shall proceed to assign and hold such hearing in accord-
 21 ance with the methods herein prescribed for a petition
 22 for reassessment. After any such hearing, the commis-
 23 sioner shall, within a reasonable time, give notice in
 24 writing of the decision. Unless an appeal is made within
 25 thirty days from service of this notice, the commissioner's
 26 decision shall be final.

27 Every assessment made by the commissioner under this
 28 article which becomes final shall constitute a judgment
 29 and may be collected as judgments are collected.

30 An appeal may be made by the taxpayer to the circuit
 31 court of the county in which he conducts the taxed
 32 activity, or in which he resides, or in the circuit court of

33 Kanawha County, within thirty days after he has received
34 notice from the commissioner of his determination as
35 provided in this section.

36 The appeal shall be made by written notice to the
37 commissioner and served as an original notice. When the
38 notice is served it shall, with the return thereon, be filed
39 in the office of the clerk of the circuit court and docketed
40 as other cases with the taxpayer as plaintiff and the
41 commissioner as defendant. Before the appeal is heard,
42 the plaintiff shall file with the clerk a bond for the use of
43 the defendant, with sureties approved by the clerk, the
44 penalty of the bond to be not less than the total amount of
45 the tax, interest, additions to tax and penalties appealed
46 from, and conditioned that the plaintiff shall perform the
47 orders of the court.

48 The court shall hear the appeal and determine anew all
49 questions submitted to it on appeal from the determina-
50 tion of the commissioner. In such appeal, a certified copy
51 of the commissioner's assessment is admissible and shall
52 constitute prima facie evidence of the tax due under the
53 provisions of this article. The court shall render its
54 decree thereon and a certified copy of the decree shall be
55 filed by the clerk of said court with the commissioner
56 who shall then correct the assessment in accordance with
57 said decree. An appeal may be made by the taxpayer or
58 the commissioner to the supreme court of appeals of this
59 state.

§60-8-12. Sale or discontinuance of business of taxpayer.

1 Whenever any person liable for the tax imposed by
2 this article ceases business at any location by reason of
3 sale or discontinuance, the taxes imposed by this article
4 are due and payable immediately and such person shall
5 make a final return within fifteen days after the date of
6 sale or discontinuance. Such taxes shall be a lien upon the
7 property of such person.

§60-8-13. Collection by distraint; report of collection.

1 The commissioner may distrain upon any goods, chattels
2 or intangibles represented by negotiable evidences of
3 indebtedness of any taxpayer delinquent under this
4 article for the amount of all taxes accrued and unpaid

5 hereunder. The commissioner may require the assistance
6 of the sheriff of any county of the state in levying such
7 distress in the county of which such sheriff is an officer.
8 A sheriff collecting taxes due hereunder is entitled to
9 compensation in the amount of all additions to tax col-
10 lected exceeding the principal amount of the tax due,
11 but in no case may such compensation exceed twenty-five
12 dollars. All taxes collected shall be reported and re-
13 turned within ten days after collection to the commis-
14 sioner, who shall pay the sheriff the compensation due
15 him under this section.

16 The sheriff shall within five days after receipt of the
17 distress warrant file with the clerk of the county com-
18 mission a copy thereof and thereupon the clerk shall
19 enter in the judgment docket the name of the taxpayer
20 mentioned in the warrant and the amount of the tax for
21 which the warrant is issued and the date when such
22 copy is filed, and thereupon the amount so docketed
23 shall become a lien upon the title to an interest in real
24 property or chattels real of the person against whom it
25 is issued, in the same manner as a judgment duly docket-
26 ed in the office of such clerk. The sheriff shall then
27 proceed upon the warrant in the same manner prescribed
28 by law in respect to executions issued against property
29 upon judgment of a court of record. If a warrant is
30 returned not satisfied in full, the commissioner has the
31 same remedies to enforce the claim for the taxes against
32 the taxpayer as if the state had recovered judgment
33 against the taxpayer for the amount of the tax.

§60-8-14. Collection by action or suit.

1 The commissioner may collect any tax due and unpaid
2 under the provisions of this article by appropriate legal
3 proceedings in the county where the activity taxed was
4 conducted or the taxpayer resides, or by a suit to enforce
5 the lien therefor in any county where property of the
6 taxpayer is located.

§60-8-15. Registration of labels; fees.

1 Every distributor shall register with the commissioner
2 each label offered for sale in the state and shall pay a fee
3 of three dollars for the registration of such label. No

4 wine may be sold under this article unless its label has
5 been registered.

§60-8-16. Relationships between licensees; unlawful acts.

1 It is unlawful:

2 (a) For a distributor to discriminate in price, sales
3 agreements, terms or services offered to retailers. "Dis-
4 criminate" as used in this section means the granting of
5 more favorable prices, agreements, terms or services to
6 one person than to another.

7 (b) For a distributor to sell or offer to sell, or a retailer
8 to purchase or receive, any wine except on a cash basis,
9 and no right of action exists to collect any claims for
10 credit extended contrary to the provisions of this sub-
11 division: *Provided*, That nothing herein prohibits, as a
12 credit on any subsequent sale, the crediting of the pur-
13 chase price charged for wine returned by the purchaser
14 because of damage, spoilage, erroneous shipments or
15 orders, and other such reasons customary in the trade.

§60-8-17. Unlawful acts generally.

1 It is unlawful:

2 (a) For a retailer, his servants, agents or employees,
3 to sell or deliver wine on any general election day, or
4 between the hours of two o'clock a.m. and one o'clock p.m.
5 on Sundays, or between the hours of twelve o'clock mid-
6 night and eight o'clock a.m. on weekdays;

7 (b) For a distributor, his agents, servants or employees
8 to transport or deliver wine to any retail licensee on
9 Sunday or any general election day;

10 (c) For a distributor to sell or deliver wine purchased
11 or acquired from any source other than a person regis-
12 tered under the provisions of section five, article eight,
13 chapter sixty of this code, or for a retailer to sell or
14 deliver wine purchased or acquired from any source
15 other than a licensed distributor;

16 (d) For a licensee under this article to acquire, trans-
17 port, possess for sale, or sell wine other than in the
18 original package;

19 (e) For a licensee, his servants, agents or employees

20 to sell, furnish or give wine to any minor, mental in-
 21 competent, or person who is physically incapacitated due
 22 to the consumption of alcoholic liquor or the use of
 23 drugs;

24 (f) For a person to violate any reasonable rule or
 25 regulation promulgated by the commissioner under this
 26 article.

§60-8-18. Criminal penalties.

1 Any person who violates any provision of this article
 2 or who makes any false statement concerning any ma-
 3 terial fact in submitting application for license or for a
 4 renewal of a license or in any hearing concerning the
 5 suspension or revocation thereof, or who commits any of
 6 the acts herein declared to be unlawful, is guilty of a
 7 misdemeanor, and, upon conviction thereof, shall for each
 8 offense be fined not less than twenty-five dollars nor more
 9 than five hundred dollars, or imprisoned in the county
 10 jail not less than thirty days nor more than six months, or
 11 both fined and imprisoned. Magistrate courts shall have
 12 concurrent jurisdiction with the circuit court for the trial
 13 of all misdemeanors arising under this article.

§60-8-19. Application for license; contents; verification.

1 Any person desiring a license under this article shall
 2 file a written application for a license with the commis-
 3 sioner, and in the application shall state under oath:

4 (1) The name of the applicant, including his trade
 5 name if any, his address and the length of his residence
 6 within this state;

7 (2) The address of the place of business for which the
 8 license is desired, or other description that definitely
 9 locates it; and that the place of business conforms to all
 10 health and fire laws and regulations applicable thereto;

11 (3) The name of the owner of the premises upon which
 12 the business is to be conducted, and, if the owner is not
 13 the applicant, that such applicant is the bona fide lessee
 14 of the business;

15 (4) If the application is for a retailer's license, that
 16 the applicant is the proprietor or owner of a bona fide
 17 grocery store;

18 (5) That the applicant intends to carry on the business
19 authorized by the license for himself or under his imme-
20 diate supervision or direction and that he actually main-
21 tains a warehouse and inventory of wine for distribution;

22 (6) That the applicant is a citizen of the United States
23 and a bona fide resident of this state who is not less than
24 eighteen years of age;

25 (7) That the applicant has not been convicted of a fel-
26 ony or other crime involving moral turpitude within the
27 three years next preceding the filing of the application;
28 and that he has not, within the two years next preceding
29 the filing of the application, been convicted of violating
30 the liquor laws of any state or of the United States;

31 (8) That the applicant has not during the five years
32 next preceding the date of said application had any li-
33 cense revoked under this chapter or under the liquor
34 laws of any other state;

35 (9) If the applicant is a firm, association, or partner-
36 ship, the application shall state the matters required in
37 subdivisions (6), (7) and (8), with respect to each of the
38 members thereof, and each of said members must meet
39 all the requirements in said subdivisions;

40 (10) If the applicant is a corporation, organized or
41 authorized to do business in this state, the application
42 shall state the matters required in subdivisions (6), (7)
43 and (8), with respect to each of the officers and directors
44 thereof, and any stockholder owning twenty percent or
45 more of the stock of such corporation, and the persons
46 who conduct and manage the licensed premises for the
47 corporation. Each of said individuals must meet all the
48 requirements provided in those subdivisions except that
49 the requirements as to citizenship and residence shall not
50 apply to the officers, directors and stockholders of a cor-
51 poration applying for a retailer's license;

52 (11) Any other information that the commissioner may
53 reasonably require.

54 The foregoing statements required in an application
55 shall constitute mandatory prerequisites for the issuance
56 of a license.

57 The application must be verified by the owner, or each
 58 member of the firm, each partner, if a partnership, each
 59 member of the governing board, if an association, or each
 60 officer and director, if a corporation: *Provided*, That the
 61 application of a corporation applying for a retailer's
 62 license need be verified only by its president or vice-
 63 president.

§60-8-20. Bond required of distributors.

1 Each applicant for a distributor's license shall furnish
 2 with his application a bond with a corporate surety
 3 authorized to transact business in this state, payable to
 4 the state, and conditioned on the payment of all taxes and
 5 fees herein prescribed and on the faithful performance
 6 of and compliance with the provisions of this article.
 7 The penal sum of the bond shall be five thousand
 8 dollars.

**§60-8-21. Investigation by commissioner; issuance or refusal
 of license; expiration of license; renewal; license
 not transferable; change of location.**

1 (a) Upon receipt of the application, fee, and bond if
 2 required, the commissioner shall conduct such investi-
 3 gation as he may deem necessary to determine the ac-
 4 curacy of the matters contained in the application. For
 5 the purposes of conducting such investigation, the com-
 6 missioner may withhold the granting or refusal to grant
 7 a license for a period not to exceed thirty days. If it
 8 appears that there is no false statement contained in the
 9 application and that the issuance of the license would
 10 not be in conflict with any of the provisions of this
 11 chapter, the commissioner shall issue the license, and
 12 otherwise shall refuse to issue such license.

13 (b) Upon refusal to issue such license, the commis-
 14 sioner shall enter an order refusing such application,
 15 which refusal is final unless a hearing is requested in
 16 accordance with the provisions of section twenty-three
 17 of this article. When such refusal becomes final the
 18 commissioner shall forthwith refund to the applicant
 19 his fees and bond accompanying said application.

20 (c) Such license shall expire on the thirtieth day of

21 June next following the date it was issued and may be
22 renewed upon the same showing as required for the is-
23 suance of the initial license, together with the payment
24 of fee and filing of any bond required by this article.

25 (d) Such license shall not be transferred to another
26 person, but the location of the premises to which the
27 license relates may be changed with the written consent
28 of the commissioner if the new location is such as would
29 satisfy the requirements of this article upon an initial
30 application.

**§60-8-22. Duties and powers of commissioners; rules and regu-
lations.**

1 The commissioner is hereby authorized:

2 (a) To enforce the provisions of this article.

3 (b) To enter the premises of any licensee at reasonable
4 times for the purpose of inspecting the premises, and
5 determining the compliance of the licensee with the
6 provisions of this article and any rules and regulations
7 promulgated by the commissioner.

8 (c) In addition to rules and regulations relating to
9 the tax imposed by section three of this article, to
10 promulgate reasonable rules and regulations as he deems
11 necessary for the execution and enforcement of the pro-
12 visions of this article, which may include but shall not
13 be limited to:

14 (1) The transport, use, handling, service and sale of
15 wine;

16 (2) Establishing standards of identity, quality and
17 purity to protect the public against wine containing
18 deleterious, harmful or impure substances or elements
19 and against spurious or imitation wines and wines unfit
20 for human consumption.

21 (d) To issue subpoenas and subpoenas duces tecum for
22 the purposes of conducting hearings under the provisions
23 of section twenty-three of this article, which subpoenas
24 and subpoenas duces tecum shall be issued in the time,
25 for the fees, and shall be enforced in the manner specified
26 in section one, article five, chapter twenty-nine-a of this

27 code with like effect as if said section one was set forth
28 in extenso in this subdivision.

29 The authority granted in subdivisions (a), (b) and
30 (d) of this section may also be exercised by the duly
31 authorized agents of the commissioner.

**§60-8-23. Revocation or suspension of license; investigation;
right to a hearing; procedure upon refusal to issue
license or suspension or revocation of license; costs
and bond; hearing; judicial review; appeal; legal
assistance for commissioner.**

1 (a) The commissioner may on his own motion, or shall
2 on the sworn complaint of any person, conduct an in-
3 vestigation to determine if any provisions of this ar-
4 ticle have been violated by any licensee. The commis-
5 sioner may suspend or revoke any licensee's license if
6 he finds that such licensee has violated any provision
7 of this article, or if he finds the existence of any ground
8 on which a license could have been refused, if such
9 licensee were then applying for a license, and if the
10 commissioner finds that a licensee has willfully violated
11 any provision of this article he shall revoke such li-
12 censee's license.

13 (b) Whenever any distributor fails or refuses to keep
14 the bond required by section twenty of this article in
15 effect, such distributor's license shall be automatically
16 suspended until such time as bond required by section
17 twenty is furnished to the commissioner, at which time
18 such suspension shall be vacated.

19 (c) Whenever the commissioner refuses to issue a
20 license, or suspends or revokes a license, he shall enter
21 an order to that effect, and cause a copy of the order
22 to be served in person or by certified mail, return receipt
23 requested, on the licensee or applicant.

24 (d) Any applicant or licensee, as the case may be,
25 adversely affected by such order shall have a right to a
26 hearing thereon before the commissioner, providing that
27 demand in writing for such hearing is served upon the
28 commissioner within ten days following the receipt by
29 such applicant or licensee of the copy of said order. The
30 service of such demand for a hearing upon the com-

31 commissioner shall operate to suspend the execution of the
32 order with respect to which a hearing is being demanded,
33 except an order suspending a license under the pro-
34 visions of subsection (b) of this section. The person
35 demanding a hearing shall give security for the cost of
36 such hearing in such form and amount as the commis-
37 sioner may reasonably require. If the person demanding
38 such hearing does not substantially prevail in such
39 hearing or upon judicial review thereof as hereinafter
40 provided, then the costs of such hearing shall be assessed
41 against him by the commissioner and may be collected
42 by an action at law or other proper remedy.

43 (e) The commissioner shall immediately set a date
44 for such hearing and notify the person demanding such
45 hearing thereof, which hearing shall be held within
46 thirty days after receipt of said demand. At such hear-
47 ing the commissioner shall hear evidence and there-
48 after enter an order supporting by findings of facts,
49 affirming, modifying or vacating the order, which order
50 shall be final unless vacated or modified upon judicial
51 review thereof.

52 (f) Such hearing and the administrative procedure
53 prior to, during and following the hearing shall be gov-
54 erned by and in accordance with the provisions of ar-
55 ticle five, chapter twenty-nine-a of this code in like
56 manner as if the provisions of article five were set
57 forth in extenso in this section.

58 (g) Any person adversely affected by an order en-
59 tered following such hearing shall have the right of
60 judicial review thereof in accordance with the provi-
61 sions of section four, article five, chapter twenty-nine-a
62 of this code with like effect as if the provisions of said
63 section four were set forth in extenso herein.

64 (h) The judgment of a circuit court reviewing the
65 order of the commissioner shall be final unless reversed,
66 vacated or modified on appeal to the supreme court of
67 appeals in accordance with the provisions of section
68 one, article six, chapter twenty-nine-a of this code.

69 (i) Legal counsel and services for the commissioner
70 in all such proceedings in any circuit court and the

71 supreme court of appeals shall be provided by the at-
72 torney general or his assistants and in any proceedings
73 in any circuit court by the prosecuting attorney of that
74 county as well, all without additional compensation.

§60-8-24. Forfeiture of bond; collection.

1 On conviction of a violation of any provision of this
2 article or upon the revocation of a license in accordance
3 with section twenty-three of this article, which con-
4 viction or revocation has become final, the licensee or
5 former licensee, as the case may be, shall forfeit any
6 bond required by section twenty of this article. The
7 penal sum of said bond shall forthwith be paid to the
8 state treasurer and credited to the general revenue fund
9 of this state. Such sum may be collected by an action
10 at law or other appropriate remedy.

§60-8-25. Disposition of revenue.

1 (a) All fees collected by the commissioner under the
2 provisions of this article shall be deposited in the state
3 treasury and credited to a special fund to be known as
4 the "wine license special fund." All moneys in such
5 special fund may be expended only for the administra-
6 tion of the provisions of this article.

7 (b) The gallonage tax imposed and collected by the
8 commissioner under the provisions of this article shall
9 be paid into the state treasury and deposited in the
10 general revenue fund of the state.

11 (c) All moneys collected by the commissioner under
12 the provisions of this article shall be remitted to the
13 state treasury monthly within fifteen days after the end
14 of each month.

§60-8-26. Certain prohibition not applicable.

1 The prohibition contained in subdivisions (h) and (j)
2 of section thirteen, article sixteen, chapter eleven of this
3 code and the prohibitions contained in subdivisions (1),
4 (2) and (3) of section seven, article six of this chapter
5 shall not apply to the holder of a retailer's license is-
6 sued under the provisions of this article.

§60-8-27. Election in county or municipality.

1 A county, or any municipality may in an election

2 held especially for the purpose, determine whether the
3 retail sale of wine shall be prohibited within that
4 county or municipality.

5 A local option election shall not be held within sixty
6 days of a general or municipal election.

**§60-8-28. Election called on petition of twenty-five percent of
qualified voters.**

1 The county commission, or the governing body of the
2 municipality, as the case may be, shall call a special
3 "local option election" upon the filing of a petition signed
4 by not less than twenty-five percent of the qualified
5 voters within the county or municipality.

§60-8-29. Form of petition.

1 The petition shall be in the following form:

2 PETITION FOR LOCAL OPTION ELECTION

3 We, the undersigned legally qualified voters, resident
4 within the county (municipality) of _____,
5 do hereby petition that a special election be held within
6 the county (city, town) of _____ on
7 the _____ day of _____, 19____,
8 upon the following question:

9 Shall the retail sale of wine be permitted in _____?

10 Name Address Date
11 (Post office or street and number)

§60-8-30. Notice of election; when held; election officers.

1 The county commission or governing body of the
2 municipality shall give notice of the special "local option
3 election" by publication thereof as a Class II-O legal
4 advertisement in compliance with the provisions of
5 article three, chapter fifty-nine of this code, and the
6 publication area for such publication shall be the area
7 in which the election is to be held. Such notice shall be
8 so published within fourteen consecutive days next pre-
9 ceding the election. The election shall be held not more
10 than ninety nor less than sixty days from the filing of
11 the petition. The regular election officers of the county or
12 municipal corporation shall open the polls and conduct

13 the election in the same manner provided for general
14 elections.

§60-8-31. Form of ballot.

- 1 On the ballot shall be printed the following:
- 2 Shall the retail sale of wine be permitted in ?
- 3 ☐ Yes.
- 4 ☐ No.
- 5 (Place a cross mark in the square opposite your choice.)

§60-8-32. How election conducted and results certified.

- 1 The ballots shall be counted, returns made and can-
- 2 vassed as in general elections, and the results certified
- 3 by the commissioners of election to the county commission
- 4 of the county, or the governing body of the municipality,
- 5 as the case may be. The county commission or governing
- 6 body shall without delay certify the result of the election
- 7 to the commission.

Enr. Com. Sub. for S. B. No. 280] 24

19 MAR 27 PM 38

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

James L. Davis
Chairman Senate Committee

Lawrence C. Christian M.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Sullivan
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

W. B. Blankenship
President of the Senate

W. B. Blankenship
Speaker House of Delegates

The within *is disapproved* this the *27*
day of *March*, 1979.

John D. Ralston
Governor

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