WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

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ENROLLED
Committee Substitute for
SENATE BILL NO. 280

(By Mr. Costanza, Mr. Kussir & Mr. Segalla)

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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 authority to levy and collect a tax upon all purchases within such municipality of intoxicating liquors from the alcohol beverage control commissioner or from any person licensed to sell wine at retail to the public under the provisions of article eight, chapter sixty of this code: Provided, That no municipality shall have authority to levy or collect any such tax on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven,
chapter sixty of this code. The tax shall be levied upon
the purchaser and shall be added to and collected with
the price of purchase. The tax shall not exceed three
percent of the purchase price.
A copy of any ordinance imposing the tax authorized
by this section shall be certified by the mayor of the
municipality to the West Virginia alcohol beverage con-
trol commissioner and to the tax commissioner. The
West Virginia alcohol beverage control commissioner
by appropriate rules and regulations shall provide for
the collection of such tax upon all purchases within such
municipality of intoxicating liquors from the alcohol
beverage control commission and for distribution
thereof to the respective municipalities for which the
same shall be collected. Such rules and regulations
shall provide that all such taxes shall be deposited with
the state treasurer and distributed quarterly by the
treasurer upon warrants of the auditor payable to the
municipality.
Every municipality shall have plenary power and
authority to levy and collect a fee from any private club
licensee whose premises are situate therein, as author-
ized in section seven, article seven, chapter sixty of this
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
by authority of articles seven and eight of this chapter,
unless prohibited by local election pursuant to article
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.

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

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

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§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.

ARTICLE 8. SALE OF WINE.

§60-8-1. Definitions.

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

"Commissioner" means the West Virginia alcohol beverage control commissioner.

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

"Grocery store" means any retail establishment commonly known as a grocery store, supermarket or deli-
catessen, where food or food products are sold for consumption off the premises.

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

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

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

"Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article and any person claiming a refund of tax.

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

No person may engage in business in the capacity of a distributor or retailer without first obtaining a license from the commissioner, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

The commissioner shall collect an annual fee for licenses issued under this article as follows:

(a) Twenty-five hundred dollars per year for a distributor's license.

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

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

No retailer may be licensed as a private club as provided by article seven of this chapter or as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code. A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment.
A retailer's license may be issued only to the proprietor 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 by distributors to retailers a tax of fifty cents per gallon (and in like ratio on other volumes) on all wine containing fourteen percent or less alcohol by volume, and seventy cents per gallon (and in like ratio on other volumes) on all wine containing more than fourteen percent alcohol by volume. No wine imported, sold or distributed in this state shall be subject to more than one gallonage tax.

2 The retailer shall pay to the distributor the amount of tax imposed by this article which shall be added to and constitute part of the sales price, and shall be collectible as such by the distributor. Before the sixteenth day of each month during the license period, every distributor shall make a written report, under oath, to the commissioner showing the quantity, label and alcoholic content of wine sold and purchased by the distributor during the preceding month, and at the same time shall pay the tax imposed by this article on the wine sold during the preceding month. The report shall contain other information and be in the form the commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns.

§60-8-4. Refund or credit of taxes.

1 The commissioner shall refund, or credit on a subsequent return, any tax which has been erroneously or illegally collected. In the event that a licensee, while the owner of wine on which the tax imposed by this article has been paid, loses such wine through fire or casualty or because such wine has been declared by the commissioner to be unfit for sale, and the amount of tax paid exceeds fifty dollars, the commissioner shall refund the tax paid. The commissioner shall promulgate regulations establishing the procedure and nature of 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 state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article.
2 Every person, whether resident or nonresident in this state, who is engaged in or desires to engage in the sale or shipment of wine to a distributor for resale under this article shall, prior to engaging in such activities, register with the commissioner. Before the sixteenth day of each month, every such person shall make a written report, under oath, to the commissioner showing all sales, shipments and deliveries of wine made to distributors during the preceding month. The report shall state the identity of the purchaser, the quantity, label and alcoholic content of the wine, and shall be in the form and contain other information the commissioner may require. If any such person violates the provisions of this article, he shall not be permitted to sell, ship or deliver any wine to a distributor or to the commissioner, or otherwise engage in the wine business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any distributor within this state to buy or receive wine from such person or to have any dealings with such person with respect thereto. Hearings and appeals on such notices may be had in the same manner as in the case of 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, and every distributor, shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading and other pertinent papers required by the commissioner. All such records shall be preserved for at least two years. The commissioner may inspect the books, accounts and records of any licensee
and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor. The commissioner may require the production, within this state at the time and place he may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the commissioner or his duly designated agents.

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

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

§60-8-8. Jeopardy assessments.

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

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

(1) Interest.—The tax imposed by this article, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return. Each
assessment or deficiency notice made by the commis-
3 sioner shall bear interest at the rate of six percent per
4 annum. In all cases of delinquency or extensions of time,
5 interest shall be assessed and collected.

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

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

§60-8-11. Hearings; appeals.

In every case when a petition for reassessment is filed,
the commissioner shall assign a time and place for the
hearing of same and shall notify the petitioner of such
hearing by written notice at least twenty days in advance
thereof. Such hearing shall be held within sixty days
from the filing of the petition for reassessment unless
continued by agreement or by the commissioner for good
cause. The hearing shall be informal and may be con-
ducted by an examiner designated by the commissioner.

At such hearing, the assessment shall constitute prima
facie evidence of the claim of the state and the burden
of proof shall be upon the taxpayer assessed to show that
the assessment is incorrect and contrary to law. In every
case where a petition or request for refund as above
described is filed and the commissioner has refused to
allow said refund in whole or in part, the petitioner may
file within thirty days after receipt of the commissioner's
decision a written request for hearing. In every case
where a request for hearing is filed, the commissioner
shall proceed to assign and hold such hearing in accord-
ance with the methods herein prescribed for a petition
for reassessment. After any such hearing, the commis-
sioner shall, within a reasonable time, give notice in
writing of the decision. Unless an appeal is made within
thirty days from service of this notice, the commissioner's
decision shall be final.

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

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

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

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

The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the commissioner. In such appeal, a certified copy of the commissioner's assessment is admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of the decree shall be filed by the clerk of said court with the commissioner who shall then correct the assessment in accordance with said decree. An appeal may be made by the taxpayer or the commissioner to the supreme court of appeals of this state.

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

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

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

The commissioner may distrain upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness of any taxpayer delinquent under this article for the amount of all taxes accrued and unpaid.
hereunder. The commissioner may require the assistance of the sheriff of any county of the state in levying such distress in the county of which such sheriff is an officer. A sheriff collecting taxes due hereunder is entitled to compensation in the amount of all additions to tax collected exceeding the principal amount of the tax due, but in no case may such compensation exceed twenty-five dollars. All taxes collected shall be reported and returned within ten days after collection to the commissioner, who shall pay the sheriff the compensation due him under this section.

The sheriff shall within five days after receipt of the distress warrant file with the clerk of the county commission a copy thereof and thereupon the clerk shall enter in the judgment docket the name of the taxpayer mentioned in the warrant and the amount of the tax for which the warrant is issued and the date when such copy is filed, and thereupon the amount so docketed shall become a lien upon the title to an interest in real property or chattels real of the person against whom it is issued, in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall then proceed upon the warrant in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record. If a warrant is returned not satisfied in full, the commissioner has the same remedies to enforce the claim for the taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax.

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

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

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

Every distributor shall register with the commissioner each label offered for sale in the state and shall pay a fee of three dollars for the registration of such label. No
wine may be sold under this article unless its label has been registered.

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

It is unlawful:

(a) For a distributor to discriminate in price, sales agreements, terms or services offered to retailers. "Discriminate" as used in this section means the granting of more favorable prices, agreements, terms or services to one person than to another.

(b) For a distributor to sell or offer to sell, or a retailer to purchase or receive, any wine except on a cash basis, and no right of action exists to collect any claims for credit extended contrary to the provisions of this subdivision: Provided, That nothing herein prohibits, as a credit on any subsequent sale, the crediting of the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipments or orders, and other such reasons customary in the trade.

§60-8-17. Unlawful acts generally.

It is unlawful:

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

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

(c) For a distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of section five, article eight, chapter sixty of this code, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor;

(d) For a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

(e) For a licensee, his servants, agents or employees
to sell, furnish or give wine to any minor, mental in-
competent, or person who is physically incapacitated due
to the consumption of alcoholic liquor or the use of
drugs;
(f) For a person to violate any reasonable rule or
regulation promulgated by the commissioner under this
article.

§60-3-12. Criminal penalties.

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

§60-3-13. Application for license; contents; verification.

Any person desiring a license under this article shall
file a written application for a license with the commis-
sioner, and in the application shall state under oath:
(1) The name of the applicant, including his trade
name if any, his address and the length of his residence
within this state;
(2) The address of the place of business for which the
license is desired, or other description that definitely
locates it; and that the place of business conforms to all
health and fire laws and regulations applicable thereto;
(3) The name of the owner of the premises upon which
the business is to be conducted, and, if the owner is not
the applicant, that such applicant is the bona fide lessee
of the business;
(4) If the application is for a retailer’s license, that
the applicant is the proprietor or owner of a bona fide
grocery store;
(5) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision or direction and that he actually maintains a warehouse and inventory of wine for distribution;

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

(7) That the applicant has not been convicted of a felony or other crime involving moral turpitude within the three years next preceding the filing of the application; and that he has not, within the two years next preceding the filing of the application, been convicted of violating the liquor laws of any state or of the United States;

(8) That the applicant has not during the five years next preceding the date of said application had any license revoked under this chapter or under the liquor laws of any other state;

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

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

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

The foregoing statements required in an application shall constitute mandatory prerequisites for the issuance of a license.
The application must be verified by the owner, or each member of the firm, each partner, if a partnership, each member of the governing board, if an association, or each officer and director, if a corporation: Provided, That the application of a corporation applying for a retailer's license need be verified only by its president or vice-president.

§60-8-20. Bond required of distributors.
1 Each applicant for a distributor's license shall furnish with his application a bond with a corporate surety authorized to transact business in this state, payable to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article. The penal sum of the bond shall be five thousand 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 required, the commissioner shall conduct such investigation as he may deem necessary to determine the accuracy of the matters contained in the application. For the purposes of conducting such investigation, the commissioner may withhold the granting or refusal to grant a license for a period not to exceed thirty days. If it appears that there is no false statement contained in the application and that the issuance of the license would not be in conflict with any of the provisions of this chapter, the commissioner shall issue the license, and otherwise shall refuse to issue such license.

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

(c) Such license shall expire on the thirtieth day of
June next following the date it was issued and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fee and filing of any bond required by this article.

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

§60-8-22. Duties and powers of commissioners; rules and regulations.

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 times for the purpose of inspecting the premises, and determining the compliance of the licensee with the provisions of this article and any rules and regulations promulgated by the commissioner.
4 (c) In addition to rules and regulations relating to the tax imposed by section three of this article, to promulgate reasonable rules and regulations as he deems necessary for the execution and enforcement of the provisions of this article, which may include but shall not be limited to:
5 (1) The transport, use, handling, service and sale of wine;
6 (2) Establishing standards of identity, quality and purity to protect the public against wine containing deleterious, harmful or impure substances or elements and against spurious or imitation wines and wines unfit for human consumption.
7 (d) To issue subpoenas and subpoenas duces tecum for the purposes of conducting hearings under the provisions of section twenty-three of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this
code with like effect as if said section one was set forth in extenso in this subdivision.

The authority granted in subdivisions (a), (b) and (d) of this section may also be exercised by the duly 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.

(a) The commissioner may on his own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article have been violated by any licensee. The commissioner may suspend or revoke any licensee's license if he finds that such licensee has violated any provision of this article, or if he finds the existence of any ground on which a license could have been refused, if such licensee were then applying for a license, and if the commissioner finds that a licensee has willfully violated any provision of this article he shall revoke such licensee's license.

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

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

(d) Any applicant or licensee, as the case may be, adversely affected by such order shall have a right to a hearing thereon before the commissioner, providing that demand in writing for such hearing is served upon the commissioner within ten days following the receipt by such applicant or licensee of the copy of said order. The service of such demand for a hearing upon the com-
missioner shall operate to suspend the execution of the
order with respect to which a hearing is being demanded,
except an order suspending a license under the pro-
svisions of subsection (b) of this section. The person
demanding a hearing shall give security for the cost of
such hearing in such form and amount as the commis-
sioner may reasonably require. If the person demanding
such hearing does not substantially prevail in such
hearing or upon judicial review thereof as hereinafter
provided, then the costs of such hearing shall be assessed
against him by the commissioner and may be collected
by an action at law or other proper remedy.

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

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

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

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

(i) Legal counsel and services for the commissioner
in all such proceedings in any circuit court and the
The supreme court of appeals shall be provided by the attorney general or his assistants and in any proceedings in any circuit court by the prosecuting attorney of that 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 article or upon the revocation of a license in accordance with section twenty-three of this article, which conviction or revocation has become final, the licensee or former licensee, as the case may be, shall forfeit any bond required by section twenty of this article. The penal sum of said bond shall forthwith be paid to the state treasurer and credited to the general revenue fund of this state. Such sum may be collected by an action at law or other appropriate remedy.

§60-8-25. Disposition of revenue.
1 (a) All fees collected by the commissioner under the provisions of this article shall be deposited in the state treasury and credited to a special fund to be known as the "wine license special fund." All moneys in such special fund may be expended only for the administration of the provisions of this article.
2 (b) The gallonage tax imposed and collected by the commissioner under the provisions of this article shall be paid into the state treasury and deposited in the general revenue fund of the state.
3 (c) All moneys collected by the commissioner under the provisions of this article shall be remitted to the state treasury monthly within fifteen days after the end of each month.

§60-8-26. Certain prohibition not applicable.
1 The prohibition contained in subdivisions (h) and (j) of section thirteen, article sixteen, chapter eleven of this code and the prohibitions contained in subdivisions (1), (2) and (3) of section seven, article six of this chapter shall not apply to the holder of a retailer's license issued under the provisions of this article.

§60-8-27. Election in county or municipality.
1 A county, or any municipality may in an election
held especially for the purpose, determine whether the retail sale of wine shall be prohibited within that county or municipality.

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

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

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

§60-8-29. Form of petition.

The petition shall be in the following form:

PETITION FOR LOCAL OPTION ELECTION

We, the undersigned legally qualified voters, resident within the county (municipality) of ___________________, do hereby petition that a special election be held within the county (city, town) of _____________________ on the ____________________ day of _____________, 19___, upon the following question:

Shall the retail sale of wine be permitted in _____________?

Name Address Date

(Post office or street and number)

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

The county commission or governing body of the municipality shall give notice of the special "local option election" by publication thereof as a Class II-O 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 the area in which the election is to be held. Such notice shall be so published within fourteen consecutive days next preceding the election. The election shall be held not more than ninety nor less than sixty days from the filing of the petition. The regular election officers of the county or municipal corporation shall open the polls and conduct
the election in the same manner provided for general 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 canvassed as in general elections, and the results certified by the commissioners of election to the county commission of the county, or the governing body of the municipality, as the case may be. The county commission or governing body shall without delay certify the result of the election to the commission.

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

James L. Davis
Chairman Senate Committee

Florence L. Christianson
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Sullivan
Clerk of the Senate

V.K. 'Bankers'lye
Clerk of the House of Delegates

J.R. Boddy
President of the Senate

C.L. N. Jee
Speaker House of Delegates

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

John H. Bellamy
Governor