WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED
Com. Sub. for
HOUSE BILL No. 1111

(By Miss. )

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Passed March 26, 1981

In Effect Ninety Days From Passage

Reconsidered
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 section four, article one; sections one and nine-d, article three; section twenty-two, article four; section thirteen, article six; and section eleven, article seven, 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 the retail sale of wine to the public by private licensees; providing the definition of certain terms used with respect thereto; requiring the licensure of certain persons selling to the alcohol beverage control commissioner or to certain distributors and the eligibility of certain persons for licensure; the fees applicable to such licensure; suspension or revocation of such license prohibiting certain acts for such licensed persons and providing penalties therefor; prohibiting certain state, county and municipal officials and certain relatives of such persons from being so licensed; providing for certain restrictions upon the importation of alcoholic liquors including wines into this state and providing exceptions therefor; permitting the sale by wine distributors to licensed private clubs; providing for rules of construction and application of provisions of said article eight; requiring license for distributor and retailer; establishing fees for such licenses; providing restrictions upon
eligibility for licenses; levying 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 and providing a 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; and making local option election provisions of article five, chapter sixty of this code applicable to the sale of wine by licensees hereunder; prohibiting exclusive franchise areas to be established by distributors; providing certain limitations to whom resident manufacturers of wine may sell their product and providing certain exceptions therefor; providing that all wines sold at retail must be in sealed packages or bottles and must bear such seals and labels as may be required by the commissioner; providing certain criminal penalties for the violation of the provisions of the article; granting authority to the commissioner and other persons to seek the abatement of certain public nuisances with respect to the sale of wine; and providing for certain unlawful acts on the premises of a wine retailer.
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; section twenty-two, article four; section thirteen, article six and section eleven, article seven, all of chapter sixty of said code 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.

13 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 control 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 commissioner or from any person licensed to sell wine at retail pursuant to the provisions of chapter sixty of this code 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
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25 be deposited with the state treasurer and distributed quarterly
26 by the treasurer upon warrants of the auditor payable to the
27 municipality.

28 Every municipality shall have plenary power and authority
29 to levy and collect a fee from any private club licensee whose
30 premises are situate therein, as authorized in section seven,
31 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 in
2 this state only by or through the West Virginia alcohol bever-
3 age control commissioner or retail agencies established by
4 him or any predecessor commissioners or commission, except
5 as authorized by articles seven and eight 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 in
2 this state is a state monopoly, except for sales made by
3 authority of articles seven and eight of this chapter.

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

1 For the purpose of providing financial assistance to and
2 for the use and benefit of the various counties and municipal-
3 ities of this state, there is hereby levied a tax upon all purchases
4 outside the corporate limits of any municipality of intoxicating
5 liquor from state stores or other agencies of the alcohol bever-
6 age control commissioner and of wine from any person licensed
7 to sell wine at retail under the provisions of article eight,
8 chapter sixty of this code. The tax shall be three percent of
9 the purchase price and shall be added to and collected with
10 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 collection 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 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 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 4. LICENSES.**

§60-4-22. Licensing of persons selling to a commission or certain distributors; persons eligible; fees; suspension or revocation; penalties.

No person, firm or corporation shall be or act or serve as
an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder, and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided, and may refuse to grant such license to any person heretofore convicted of a felony within ten years prior to his application for such license; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from the first day of July until the thirtieth day of June next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer, or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be one hundred dollars. The fee for any license granted for the remainder of any license year between the first day of January and the thirtieth day of June of the same calendar year shall be fifty dollars.

No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license hereunder. No member of the Legislature or the spouse of any such member may be granted a license hereunder. Nor shall any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license hereunder.

In addition to all other information which the commission may require to be supplied on the license application forms,
each applicant shall be required to state his name and his
residence address and the name and business address of the
producer, manufacturer or distributor he represents; the name
and address of each additional producer, manufacturer or dis-
tributor of alcoholic liquors he represents; the monetary total
of all alcoholic liquor sales, if any, made by him to the com-
mission or to any distributor licensed pursuant to article eight
of this chapter during the fiscal year preceding the license year
for which he is seeking a license; the monetary total of the
gross income received by him on such sales, if any, during such
fiscal year; whether he has, during such fiscal year, made or
given, voluntarily or on request, any gift, contribution of money
or property to any member or employee of the commission or
of any distributor licensed pursuant to article eight of this
chapter or to or for the benefit of any political party committee
or campaign fund; and his relationship, if any, by blood or
marriage, to any member of the commission or to any elected or
appointive state official, county official or municipal official.
All such applications shall be verified by oath of the applicant
and shall be prepared and filed in duplicate. All such applica-
tions and a current list of all licensees hereunder shall be mat-
ters of public record and shall be available to public inspection
at the commission's offices at the state capitol. Every licensee
who ceases to be an agent, broker or salesman, as herein con-
templated, shall so advise the commission in writing and such
person's name shall be immediately removed from the license
list and his license shall be cancelled and terminated.

Except as to owners, principal officers or employees of farm
wineries, all persons licensed hereunder shall be full-time
salaried employees of the distilleries, manufacturers, producers
or processors of alcoholic liquor they represent and shall de-
vote their full time to the duties of such employment and shall
have and engage in no other remunerative occupation or call-
ing at the same time. No such licensed person shall share,
divide or split his salary with any person other than his wife,
or some legal dependent, nor shall he make any contribution
to any political party campaign fund in this state.

All licensees hereunder shall be subject to all other pro-
visions of this chapter and to the lawful rules and regulations
promulgated by the commission. Licenses may be refused, suspended or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license, shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding one thousand dollars or imprisoned in jail not exceeding twelve months, or be subject to both such fine and imprisonment in the discretion of the court.

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 article eight of this chapter, a person shall not import into, or transport in this state, any alcoholic liquors, unless it is:

4 (1) Consigned to the commission;

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

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner; exceptions.

1 All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by such commissioner for sales of such alcoholic liquors to the public generally except that such licensees may purchase those wines permitted to be sold
at retail pursuant to article eight of this chapter from those
distributors licensed pursuant to said article at the same
prices such distributors sell such wines to retailers licensed
pursuant to said article.

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

(a) The provisions of part II of this article shall have
general application to the distribution and retail sale of
wine in this state. The provisions of part III of this article
shall relate solely to the distribution and the regulation of
distributors of such wines as may be permitted to be sold at
retail pursuant to the provisions of this article. The pro-
visions of part IV of this article shall relate solely to the
retail sale of wine in grocery stores as the term "grocery
store" is defined in this article and the retail sale of wine
in wine specialty shops as defined in this article. In the event
of any inconsistency of any provisions of part II and the
provisions of either part III or part IV of this article, the
provisions of either part III or part IV shall prevail to the
extent of such inconsistency.

(b) In the event of any inconsistency between any of the
provisions of this article and provisions of any other article
of this chapter or of this code, the provisions of this article
shall prevail to the extent of any such inconsistency.

(c) To the extent the provisions of this chapter exclusive
of this article may be given application without creating an
inconsistency with the provisions of this article, the provisions
of this chapter, exclusive of this article, shall apply to the
same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. 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 and actually maintains a warehouse in this state for the distribution of wine.

“Fortified wine” shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.

“Grocery store” means any retail establishment, commonly known as a grocery store, supermarket or delicatessen, where food, food products and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wines) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars. The term “grocery store” shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars.

“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 for off-premises consumption and who is licensed to do so 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.

“Varietal wine” means any wine labeled according to the grape variety from which such wine is made.
"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce such wine or harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine.

"Wine specialty shop" means a retailer who shall deal principally in the sale of table wine, wine accessories and food or foodstuffs normally associated with wine and who shall maintain a representative number of such wines for sale in his inventory which are designated by label as varietal wine, vintage, generic and/or according to region of production and such inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count.

§60-8-3. Licenses; fees; general restrictions.

Except as to farm wineries as defined by section five-a, article one of this chapter, 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 or wine specialty shop.

§60-8-4. Gallonage tax; reports by distributors; payment of tax.

There is hereby levied and imposed on all wine sold by distributors to retailers a tax of one dollar per gallon and in like ratio on other volumes. No wine imported, sold or distributed in this state shall be subject to more than one gallonage tax.

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 or purchased by the distributor during the preceding month, and at the same time shall pay the tax thereon 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.

§60-8-5. Refund or credit of taxes.

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, looses such wine through fire or casualty, other than breakage occurring on the premises of the licensee, 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
§60-8-6. Restrictions on persons selling or shipping wine to distributors; registration and reporting requirements; penalty for violation.

Except as to the commissioner, 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. 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.

§60-8-7. Record-keeping requirements; authority of commissioner to inspect and examine records and persons.

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.

§60-8-8. 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.


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.

§60-8-10. 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
4 deficiency notice made by the commissioner shall bear interest
5 at the rate of six percent per annum. In all cases of de-
6 linquency or extensions of time, interest shall be assessed
7 and collected.

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

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

§60-8-11. Notice of assessment; petition for reassessment.

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

§60-8-12. 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 conducted 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 accordance with the methods herein prescribed for a petition for reassessment. After any such hearing, the commissioner 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 upon the administrative record below 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.

§60-8-13. 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.

§60-8-14. 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.

§60-8-15. 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.

§60-8-16. Application for license; contents; verification.

Any person desiring a license under this article shall file a written application for a license with the commissioner, 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 retailers license, that the applicant is the proprietor or owner of a bona fide grocery store or wine specialty shop;

(5) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision or direction;

(6) That the applicant is a citizen of the United States and an actual bona fide resident of the state of West Virginia and 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

43 licensed premises for the corporation. Each of said individuals
44 must meet all the requirements provided in those subdivisions
45 except that the requirements as to citizenship and residence
46 shall not apply to the officers, directors and stockholders of a
47 corporation applying for a retailers license; and
48 (11) Any other information that the commissioner may
49 reasonably require.
50 The foregoing statements required in an application shall
51 constitute mandatory prerequisites for the issuance of a license.
52 The application must be verified by the owner, or each
53 member of the firm, each partner, if a partnership, each mem-
54 ber of the governing board, if an association, or each officer
55 and director, if a corporation: Provided, That the application
56 of a corporation applying for a retailers license need be veri-
57 fied only by its president or vice president.

§60-8-17. 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 requir-
2 ed, the commissioner shall conduct such investigation as he
3 may deem necessary to determine the accuracy of the matters
4 contained in the application. For the purposes of conducting
5 such investigation, the commissioner may withhold the grant-
6 ing or refusal to grant a license for a period not to exceed
7 thirty days. If it appears that there is no false statement con-
8 tained in the application and that the issuance of the license
9 would not be in conflict with any of the provisions of this
10 chapter, the commissioner shall issue the license, and other-
11 wise shall refuse to issue such license.

12 (b) The commissioner shall refuse the license of any appli-
13 cant if he finds that such applicant is not a suitable person
14 or that the place of business of such applicant is not a suitable
15 place or that such applicant has not complied with the pro-
16 visions of this chapter. Upon refusal to issue such license,
17 the commissioner shall enter an order refusing such applica-
18 tion, which refusal is final unless a hearing is requested in
19 accordance with the provisions of section eighteen 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.

§60-8-18. 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 commissioner 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 provisions 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 commissioner 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 hearing the commissioner shall hear evidence and thereafter 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 governed by and in accordance with the provisions of article 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 entered following such hearing shall have the right of judicial review thereof in accordance with the provisions 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 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.

§60-8-19. To whom licensed resident manufacturer may sell.

A person who is licensed to manufacture in this state wine as defined in this article may sell such wines in this state only to the West Virginia alcoholic beverage control commissioner and to distributors as defined in this article. Such manufacturers may sell such wine outside of this state for use or resale outside this state. The provisions of this section shall not apply to farm wineries as defined by section five-a, article one of this chapter.

§60-8-20. Unlawful act generally.

It shall be unlawful:

(a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of section six, 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 or a farm winery as defined in section five-a, article one of this chapter;

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

(c) For a licensee, his servants, agents or employees to sell, furnish or give wine to any minor, mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;
(d) For a licensee to permit any person to whom alcoholic liquors cannot be sold under the provisions of section twenty-two, article three, chapter sixty of this code, to sell, furnish or give wine to any person; or
(e) For a person to violate any reasonable rule or regulation promulgated by the commissioner under this article.

§60-8-21. Sale of wine in sealed packages required; manufacturer's label.

All wines sold pursuant to this article, except that sold pursuant to the provisions by article seven of this chapter, shall be sold only in sealed packages, bearing such seals and labels as the commissioner may require. A manufacturer of wine offered for sale by any licensee shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commissioner may require.

§60-8-22. Sales on credit prohibited; exception.

It shall be unlawful 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.

§60-8-23. Duties and powers of commissioner; rules and regulations.

The commissioner is hereby authorized:
(a) To enforce the provisions of this article.
(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:
(c) In addition to rules and regulations relating to the tax
imposed by section four 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:

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

(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.

(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.

All rules and regulations promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provision of chapter twenty-nine-a of this code. The initial rules and regulations promulgated pursuant to this article shall be so promulgated within thirty days of the effective date hereof.

§60-8-24. Disposition of revenue.

(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 or, to the extent of any excess, for the administration of this chapter or as may be appropriate by law.

(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.
(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.

§60-8-25. Criminal penalties; public nuisances.

(a) Any person who violates any provision of this article or who makes any false statement concerning any material 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.

(b) The provisions of sections sixteen and seventeen, article six of this chapter shall apply to persons violating the provisions of this article to the same extent as if such provisions were set forth in extenso herein.

§60-8-26. Forfeiture of bond; collection.

On conviction of a violation of any provision of this article or upon the revocation of a license in accordance with section eighteen 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.

§60-8-27. Local option elections.

The question “Shall the sale of alcoholic beverages under the West Virginia liquor control commission be permitted in ________________________________” stated in the petition and ballot under the provisions of sections three and five, article five of this chapter shall be deemed to include therein the sale of wine under the pro-
visions of this article. Within thirty days after a "local option election" conducted under the provisions of article five of this chapter in which a majority has voted "No," the commission shall close all state stores and discontinue all agencies within the county or municipality as provided in section seven, article five of this chapter, and each retailer shall cease the sale of wine.

PART III. WINE DISTRIBUTION.

§60-8-28. Registration of labels; fees.

Every distributor and farm winery offering wine for sale under this article 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.

§60-8-29. Bond required of distributors.

Each applicant for a distributors 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 ten thousand dollars.

§60-8-30. Exclusive franchise agreements prohibited.

It shall be illegal for any manufacturer to enter into any exclusive franchise agreement with any distributor whereby any such distributor is given the exclusive right within this state or in any given territory within this state to distribute the product or products of such manufacturer which are to be sold or distributed pursuant to the provisions of this article.

§60-8-31. Unlawful acts; discrimination prohibited.

It is unlawful:

(a) For a distributor to discriminate in price, sales agreements, terms or services offered to retailers or to any licensee under article seven of this chapter. "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, his agents, servants or employees to transport or deliver wine to any retail licensee or to any licensee under article seven of this chapter on Sunday or any general election day.

(c) For a distributor to sell wines authorized by this article to licensees under article seven of this chapter at a price which is greater than the price at which such wines are sold and distributed to retailers under this article.

PART IV. WINE RETAILERS.

§60-8-32. Where wine may be sold at retail.

Except as to sales permitted to be made by farm wineries as defined by section five-a, article one of this chapter, wine sold pursuant to this article may be sold at retail only by the commission and in and by grocery stores and wine specialty shops as defined by section two of this article.

§60-8-33. Certain prohibition not applicable.

The prohibitions 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: Provided, That all prohibitions contained within this article shall apply to the holder of a retailer's license notwithstanding the provisions of this section.

§60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, his servants, agents or employees to sell or deliver wine on any general or primary election day, or prior to one o'clock p.m. or after nine o'clock p.m. on Sundays, or between the hours of nine o'clock p.m. and ten o'clock a.m. on weekdays and Saturdays.

§60-8-35. Unlawful acts generally.

No person while on the premises of any retailer licensed pursuant to this article shall:
3 (1) Break the seal on any package or bottle of wine;
4 (2) Consume alcoholic liquor, wine or beer; or
5 (3) Loiter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is disapproved this the 3 day of April, 1981.

Governor