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APPROVED AND SIGNED BY THE GOVERNOR

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

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## ENROLLED

SENATE BILL NO. 542

(By Mr. Jucker)

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PASSED March 12, 1983

In Effect ninety days from Passage



**ENROLLED**  
**Senate Bill No. 542**

(BY MR. TUCKER)

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[Passed March 12, 1983; in effect ninety days from passage.]

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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 thirteen, article sixteen, chapter eleven of said code; to amend and reenact sections eight and twelve, article two, chapter seventeen-b of said code; to amend and reenact section one, article four of said chapter seventeen-b; to amend and reenact sections nine-d, thirteen, twenty, twenty-one and twenty-two, article three, chapter sixty of said code; to amend and reenact section three, article four of said chapter sixty; to amend and reenact sections six and nine, article six of said chapter sixty; to amend and reenact section twelve, article seven of said chapter sixty and to amend and reenact sections three, twenty, twenty-three and thirty-four, article eight of said chapter sixty, all relating to the sale of nonintoxicating beer, wine and intoxicating liquors; authorizing municipalities to collect the tax on intoxicating liquors and imposing such tax on distributors licensed to sell or distribute wine; describing unlawful acts by licensees of nonintoxicating beer and prohibiting the sale of nonintoxicating beer to persons under the age of nineteen with certain exceptions and establishing a penalty therefor; requiring the use of specific identification of persons under the age of twenty-one years when purchasing

nonintoxicating beer; permitting brewers to sponsor amateur athletic events and provide prizes therefor; providing for the issuance and contents of licenses and non-operator's identification by the department of motor vehicles, and describing how such licenses and identifications may be renewed; defining unlawful uses of licenses and non-operator's identifications and making such uses misdemeanors punishable by penalty of law; authorizing a tax on intoxicating liquors and wine sold outside the corporate limits of municipalities for the use and benefit of counties and municipalities; providing for restrictions on the display or distribution of advertising matter in stores or agencies of the alcohol beverage control commissioner and removing the restriction on the display of alcoholic liquor; providing for sales of alcoholic liquors to be by cash and other modes of payment; increasing the limitation on the amount of alcoholic liquor which can be sold to a person at one time; prohibiting the sales of alcoholic liquors to certain persons and specifically prohibiting the sale of alcoholic liquors to persons less than nineteen years of age with certain exceptions; requiring the use of specific identification for persons under the age of twenty-one years who purchase alcoholic liquors; describing those persons to whom manufacturers of alcoholic liquors may sell such liquors to and providing an exception for farm wineries; restricting the alcohol beverage control commissioner from prohibiting a farm winery licensee from advertising a particular brand of wine and the price thereof; increasing the quantity of alcoholic liquor which may be brought into or transported in this state; describing offenses relating to intoxication, drinking in public places and illegally possessing alcoholic liquor and specifically defining an offense for a person under the age of nineteen to purchase or attempt to purchase alcoholic liquor, wine or nonintoxicating beer and prescribing penalties for such offenses; establishing that for the crime of public intoxication only, a diagnosis of alcoholism shall be proof of lack of criminal responsibility and shall result in a finding of not guilty by reason of addiction and the initiation of involuntary commitment proceedings; providing prohibitions regarding intoxication or drinking in public places; providing for the crime of public intoxication, various actions by a law-enforcement officer after an arrest

without a warrant, presentment before a judicial officer, options available to such officer concerning detention of incapacitated persons; providing for minimum fines, imprisonment or counseling for various offenses; providing for the licensing of private clubs, and defining unlawful acts for such licensees and establishing penalties therefor; specifically prohibiting the sale, giving away or procurement of alcoholic liquors by a person under the age of nineteen years, with certain exceptions, and establishing a penalty therefor and specifically prohibiting a licensee from permitting consumption by or serving of alcoholic liquors to a person under the age of nineteen years with certain exceptions and prescribing a penalty therefor; providing for the sale of wines and the license fees and general restrictions applicable to distributors and retailers of wine; providing for the issuance of a wine tasting license by the commissioner; authorizing certain Class A retailer dealers in nonintoxicating beer to also be licensed as a wine retailer under certain limited circumstances; authorizing wine retailers to hold a wine tasting license and to serve complimentary samples of wine in moderate quantities at times and places where the general public is excluded; defining unlawful acts for distributors and retailers of wine and prescribing penalties therefor; specifically defining the offense of selling, furnishing or giving wine to a person less than nineteen years of age with certain exceptions and prescribing a penalty therefor; requiring the display of specific identification by persons under the age of twenty-one when purchasing wine; describing the duties and powers of the commissioner with respect to the sale of wine; specifically authorizing the commissioner to restrict the content of wine advertising; providing that the commissioner shall not prohibit the advertising of a particular brand or brands of wine and the price thereof; describing the conditions under which retail sales of wine are prohibited and defining the unlawful offenses of selling or delivering wine on certain election days or between certain hours, which such unlawful acts are subject to penalties.

*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 thirteen, article sixteen, chapter eleven of said code be amended and reenacted; that sections eight and twelve, article two, chapter seventeen-b of said code be amended and reenacted; that section one, article four of said chapter seventeen-b be amended and reenacted; that sections nine-d, thirteen, twenty, twenty-one and twenty-two, article three, chapter sixty of said code be amended and reenacted; that section three, article four of said chapter sixty be amended and reenacted; that sections six and nine, article six of said chapter sixty be amended and reenacted; that section twelve, article seven of said chapter sixty be amended and reenacted; and that sections three, twenty, twenty-three and thirty-four, article eight of said chapter sixty be amended and reenacted, all to read as follows:

#### **CHAPTER 8. MUNICIPAL CORPORATIONS.**

##### **ARTICLE 13. TAXATION AND FINANCE.**

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

1 Every municipality shall have plenary power and  
2 authority to levy and collect a tax upon all purchases within  
3 such municipality of intoxicating liquors from the alcohol  
4 beverage control commissioner, from any person licensed to  
5 sell wine at retail to the public under the provisions of  
6 article eight, chapter sixty of this code, or from distributors  
7 licensed to sell or distribute wine pursuant to said article  
8 eight: *Provided*, That no municipality shall have authority  
9 to levy or collect any such tax on the intoxicating liquors  
10 sold by or purchased from holders of a license issued under  
11 the provisions of article seven, chapter sixty of this code.  
12 The tax shall be levied upon the purchaser and shall be  
13 added to and collected with the price of purchase. The tax  
14 shall not exceed five percent of the purchase price.

15 A copy of any ordinance imposing the tax authorized by  
16 this section shall be certified by the mayor of the  
17 municipality to the West Virginia alcohol beverage control  
18 commissioner and to the tax commissioner. The West  
19 Virginia alcohol beverage control commissioner by  
20 appropriate rules and regulations shall provide for the  
21 collection of such tax upon all purchases within such  
22 municipality of intoxicating liquors from the alcohol  
23 beverage control commissioner, from any person licensed to

24 sell wine at retail pursuant to the provisions of article eight,  
25 chapter sixty of this code, or from distributors licensed to  
26 sell or distribute wine pursuant to said article eight, and for  
27 distribution thereof to the respective municipalities for  
28 which the same shall be collected. Such rules and  
29 regulations shall provide that all such taxes shall be  
30 deposited with the state treasurer and distributed quarterly  
31 by the treasurer upon warrants of the auditor payable to the  
32 municipality.

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

## CHAPTER 11. TAXATION.

### ARTICLE 16. NONINTOXICATING BEER.

#### §11-16-13. Unlawful acts of licensee; penalties. *OK*

1 It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents or  
3 employees to sell, give or dispense, or any individual to  
4 drink or consume, in or on any licensed premises or in any  
5 rooms directly connected therewith, nonintoxicating beer  
6 on weekdays between the hours of two o'clock a.m., and  
7 seven o'clock a.m., or between the hours of two o'clock a.m.,  
8 and one o'clock p.m., on any Sunday, except in private clubs  
9 licensed under the provisions of article seven, chapter sixty  
10 of this code, where the hours shall conform with the hours of  
11 sale of alcoholic liquors;

12 (b) For any licensee, his, its or their servants, agents or  
13 employees, to sell, furnish or give any nonintoxicating beer  
14 to any person under the age of nineteen unless the person is  
15 at least eighteen years of age as of the first day of July, one  
16 thousand nine hundred eighty-three, or to any person  
17 visibly or noticeably intoxicated, or to any insane person, or  
18 to any habitual drunkard;

19 (c) On and after the first day of October, one thousand  
20 nine hundred eighty-three, for any licensee, his, its or their  
21 servants, agents or employees, to sell, furnish or give any  
22 nonintoxicating beer to any person who is less than twenty-  
23 one years of age unless such person under the age of twenty-  
24 one years first displays a valid operator's license,  
25 chauffeur's license or non-operator's identification, issued

26 to such person under the provisions of section eight, article  
27 two, chapter seventeen-b of this code;

28 (d) For any distributor to sell or offer to sell, or any  
29 retailer to purchase or receive, any nonintoxicating beer  
30 except for cash; and no right of action shall exist to collect  
31 any claims for credit extended contrary to the provisions of  
32 this subdivision. Nothing herein contained shall prohibit a  
33 licensee from crediting to a purchaser the actual price  
34 charged for packages or containers returned by the original  
35 purchaser as a credit on any sale, or from refunding to any  
36 purchaser the amount paid or deposited for such containers  
37 when title is retained by the vendor;

38 (e) For any brewer or distributor or his, its or their  
39 agents, to transport or deliver nonintoxicating beer to any  
40 retail licensee on Sunday;

41 (f) For any brewer or distributor to give, furnish, rent or  
42 sell any equipment, fixtures, signs or supplies directly or  
43 indirectly or through a subsidiary or affiliate to any licensee  
44 engaged in selling products of the brewing industry at  
45 retail, or to offer any prize, premium, gift, or other similar  
46 inducement, except advertising matter of nominal value, to  
47 either trade or consumer buyers: *Provided*, That a  
48 distributor may offer, for sale or rent, tanks of carbonic gas.  
49 Nothing herein contained shall prohibit a brewer from  
50 sponsoring any amateur athletic event or from providing  
51 prizes or awards for participants and winners in any such  
52 events: *Provided, however*, That no such event shall be  
53 sponsored which permits actual participation by athletes or  
54 other persons who are minors;

55 (g) For any licensee to transport, sell, deliver or  
56 purchase any nonintoxicating beer or product of the  
57 brewing industry upon which there shall appear a label or  
58 other informative data which in any manner refers to the  
59 alcoholic content of such beer or product of the brewing  
60 industry, or upon the label of which there appears the word  
61 or words "strong," "full strength," "extra strength,"  
62 "prewar strength," "high test" or other similar expressions  
63 bearing upon the alcoholic content of such product of the  
64 brewing industry, or which refers in any manner to the  
65 original alcoholic strength, extract or balling proof from  
66 which such beverage was produced, except that such label  
67 shall state the alcoholic content thereof;

68 (h) For any licensee to permit in his premises any lewd,  
69 immoral or improper entertainment, conduct or practice;

70 (i) For any licensee except the holder of a license to  
71 operate a private club issued under the provisions of article  
72 seven, chapter sixty of this code, to possess a federal license,  
73 tax receipt or other permit entitling, authorizing or  
74 allowing such licensee to sell liquor or alcoholic drinks;

75 (j) For any licensee to obstruct the view of the interior of  
76 his premises by enclosure, lattice, drapes or any means  
77 which would prevent plain view of the patrons occupying  
78 such premises. The interior of all licensed premises shall be  
79 adequately lighted at all times: *Provided*, That provisions  
80 of this subdivision shall not apply to the premises of a Class  
81 B retailer or to the premises of a private club licensed under  
82 the provisions of article seven, chapter sixty of this code;

83 (k) For any licensee to manufacture, import, sell, trade,  
84 barter, possess, or acquiesce in the sale, possession or  
85 consumption of any alcoholic liquors on the premises  
86 covered by such license or on premises directly or indirectly  
87 used in connection therewith: *Provided*, That the  
88 prohibitions contained in this subdivision with respect to  
89 the selling or possessing or to the acquiescence in the sale,  
90 possession or consumption of alcoholic liquors shall not be  
91 applicable with respect to the holder of a license to operate  
92 a private club issued under the provisions of article seven,  
93 chapter sixty of this code;

94 (l) For any licensee to print, paint or place upon the  
95 door, window, or in any other public place in or about the  
96 premises, the word "saloon" or word of similar character or  
97 nature, or for the word "saloon" or similar words to be used  
98 in any advertisement by the licensee;

99 (m) For any retail licensee to sell or dispense  
100 nonintoxicating beer purchased or acquired from any  
101 source other than a licensed distributor or brewer under the  
102 laws of this state;

103 (n) For any licensee to permit loud, boisterous or  
104 disorderly conduct of any kind upon his premises or to  
105 permit the use of loud musical instruments if either or any  
106 of the same may disturb the peace and quietude of the  
107 community wherein such business is located: *Provided*,  
108 That no licensee shall have in connection with his place of  
109 business any loudspeaker located on the outside of the



110 licensed premises that broadcasts or carries music of any  
111 kind;

112 (o) For any person whose license has been revoked, as in  
113 this article provided, to obtain employment with any  
114 retailer within the period of one year from the date of such  
115 revocation, or for any retailer to employ knowingly any  
116 such person within such time;

117 (p) For any distributor to sell, possess for sale, transport  
118 or distribute nonintoxicating beer except in the original  
119 container;

120 (q) For any licensee to permit any act to be done upon  
121 the licensed premises, the commission of which constitutes  
122 a crime under the laws of this state;

123 (r) For any Class B retailer to permit the consumption of  
124 nonintoxicating beer upon his licensed premises;

125 (s) For any licensee, his, its or their servants, agents, or  
126 employees, or for any licensee by or through such servants,  
127 agents or employees, to allow, suffer or permit any person  
128 under the age of eighteen years to loiter in or upon any  
129 licensed premises; except, however, that the provisions of  
130 this subdivision shall not apply where such person under  
131 the age of eighteen years, is in, or upon such premises in the  
132 immediate company of his or her parent or parents, or  
133 where and while such person under the age of eighteen  
134 years is in, on or upon such premises for the purpose of and  
135 actually making a lawful purchase of any items or  
136 commodities therein sold, or for the purchase of and  
137 actually receiving any lawful service therein rendered,  
138 including the consumption of any item of food, drink or soft  
139 drink therein lawfully prepared and served or sold for  
140 consumption on such premises.

141 Any person who violates any provision of this article or  
142 who makes any false statement concerning any material  
143 fact in submitting application for license or for a renewal of  
144 a license or in any hearing concerning the revocation  
145 thereof, or who commits any of the acts herein declared to  
146 be unlawful, shall be guilty of a misdemeanor, and shall be  
147 punished for each offense by a fine of not less than twenty-  
148 five nor more than five hundred dollars, or imprisoned in  
149 the county jail for not less than thirty days or more than six  
150 months, or by both fine and imprisonment in the discretion  
151 of the court. Magistrates shall have concurrent jurisdiction  
152 with the circuit court, and any other courts having criminal

153 jurisdiction in their county, for the trial of all  
154 misdemeanors arising under this article.

**CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND  
CHAUFFEURS' LICENSES.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

**§17B-2-8. Issuance and contents of licenses and non-operator's  
identification; fees.**

1 (a) (1) The department shall, upon payment of the  
2 required fee, issue to every applicant qualifying therefor an  
3 operator's or chauffeur's license which license shall contain  
4 a coded number assigned to the licensee, the full name, date  
5 of birth, residence address, a brief description and a color  
6 photograph of the licensee and either a facsimile of the  
7 signature of the licensee or a space upon which the  
8 signature of the licensee shall be written with pen and ink  
9 immediately upon receipt of the license. No license shall be  
10 valid until it has been so signed by the licensee. The  
11 department shall use such process or processes in the  
12 issuance of licenses that will, insofar as possible, prevent  
13 any alteration, counterfeiting, duplication, reproduction,  
14 forging, or modification of, or the superimposition of a  
15 photograph on, such license.

16 (2) The fee for the issuance of an operator's license shall  
17 be ten dollars. The fee for the issuance of a chauffeur's  
18 license shall be fifteen dollars.

19 (3) The department of motor vehicles shall mark any  
20 license which is reissued following a suspension of a  
21 person's license to operate a motor vehicle in this state with  
22 the type of violation for which the original license was  
23 suspended and shall indicate the date of the violation. For  
24 purposes of this section, any conviction under the  
25 provisions of subsections (a) and (b) of the prior enactment  
26 of section two, article five, chapter seventeen-c of this code  
27 which offense was committed within a period of five years  
28 immediately preceding the effective date of the present  
29 section two, article five, chapter seventeen-c, shall be  
30 treated as a violation to which this section is applicable and  
31 suspensions based on such convictions shall be marked on  
32 licenses which are hereafter issued.

33 (b) (1) For the purposes of this subsection, a "qualified  
34 non-operator" shall mean any citizen of this state who has

35 not had issued to him a current operator's or chauffeur's  
36 license, or any person enrolled as a full-time student at an  
37 institution of higher education or an accredited vocational  
38 or trade school in this state who (A) is under the age of  
39 twenty-one years, (B) is residing in this state but is  
40 domiciled in another state, and (C) who may or may not hold  
41 a valid operator's or chauffeur's license from such other  
42 state.

43 (2) On and after the first day of August, one thousand  
44 nine hundred eighty-three, the department shall, upon  
45 payment of the same fee required for the issuance of an  
46 operator's license, issue to any qualified non-operator  
47 applying therefor a non-operator's identification which  
48 shall be in a similar form to, and shall contain the same  
49 information as contained in, a license issued under  
50 subsection (a) of this section: *Provided*, That in addition to  
51 having printed thereon the words "West Virginia Non-  
52 operator's Identification", the identification shall be coded  
53 by color or otherwise to make it clearly distinguishable  
54 from an operator's or chauffeur's license. The department  
55 shall use such process or processes in the issuance of  
56 identifications that will, insofar as possible, prevent any  
57 alteration, counterfeiting, duplication, reproduction,  
58 forging or modification of, or the superimposition of a  
59 photograph on, such identifications.

**§17B-2-12. Expiration of licenses and non-operator's  
identification; renewal; renewal fees.**

1 (a) (1) Every operator's license and every chauffeur's  
2 license shall expire four years from the date of its issuance,  
3 except that the operator's or chauffeur's license of any  
4 person in the armed forces shall be extended for a period of  
5 six months from the date the person is separated under  
6 honorable circumstances from active duty in the armed  
7 forces.

8 (2) A person who allows his operator's or chauffeur's  
9 license to expire may apply to the department for renewal  
10 thereof. Application shall be made upon a form furnished  
11 by the department and shall be accompanied by payment of  
12 the fee required by section eight of this article plus an  
13 additional fee of one dollar and fifty cents. The  
14 commissioner shall determine whether such person

15 qualifies for a renewed license and may, in his discretion,  
16 renew any expired license without examination of the  
17 applicant.

18 (3) Each renewal of an operator's or chauffeur's license  
19 shall contain a new color photograph of the licensee. By  
20 first class mail to the address last known to the department,  
21 the commissioner shall notify each person who holds a valid  
22 operator's or chauffeur's license of the expiration date of  
23 the license. The notice shall be mailed at least thirty days  
24 prior to the expiration date of the license and shall include a  
25 renewal application form.

26 (b) Every non-operator's identification shall expire  
27 four years from the date of its issuance, except that an  
28 identification issued to a person not domiciled in this state  
29 who is a full-time student shall expire four years from the  
30 date of its issuance or upon such person's attaining the age  
31 of twenty-one years, whichever is sooner. A non-operator's  
32 identification may be renewed in the same manner and for  
33 the same fees as an operator's license.

#### ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

##### **§17B-4-1. Unlawful use of license or non-operator's identification; license and non-operator's identification violations generally.**

1 It is a misdemeanor for any person to commit any one of  
2 the following acts:

3 (1) To display or cause or permit to be displayed or have  
4 in his possession any canceled, revoked, suspended,  
5 fictitious, or fraudulently altered operator's or chauffeur's  
6 license or non-operator's identification;

7 (2) To lend his operator's or chauffeur's license or non-  
8 operator's identification to any other person or knowingly  
9 permit the use thereof by another;

10 (3) To display or represent as one's own any operator's  
11 or chauffeur's license or non-operator's identification not  
12 issued to him;

13 (4) To fail or refuse to surrender to the department upon  
14 its lawful demand any operator's or chauffeur's license or  
15 non-operator's identification which has been suspended,  
16 revoked, or canceled;

17 (5) To use a false or fictitious name in any application  
18 for an operator's or chauffeur's license or non-operator's  
19 identification or to knowingly make a false statement or to

20 knowingly conceal a material fact or otherwise commit a  
21 fraud in any such application;

22 (6) To permit any unlawful use of an operator's or  
23 chauffeur's license or non-operator's identification issued  
24 to him; or

25 (7) To do any act forbidden or fail to perform any act  
26 required by this chapter.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 3. SALES BY COMMISSIONER.**

#### **§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.**

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

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

30 The West Virginia alcohol beverage control commissioner  
31 by appropriate rules and regulations shall provide for the  
32 collection of such tax upon all purchases outside the  
33 corporate limits of any municipality of intoxicating liquor  
34 from state stores or other agencies of the alcohol beverage  
35 control commissioner, separation or proration of the same  
36 and distribution thereof to the respective counties and  
37 municipalities for which the same shall be collected. The  
38 tax commissioner by appropriate rules and regulations  
39 shall provide for the collection of such tax upon all  
40 purchases outside the corporate limits of any municipality  
41 of wine from any person licensed to sell wine at retail under  
42 the provisions of article eight, chapter sixty of this code, or  
43 from distributors licensed to sell or distribute wine under  
44 the provisions of said article eight, and shall also provide  
45 for separation or proration of the same and distribution  
46 thereof to the respective counties and municipalities for  
47 which the same shall be collected. Such rules and  
48 regulations shall provide that all such taxes shall be  
49 deposited with the state treasurer and distributed quarterly  
50 by the treasurer upon warrants of the auditor payable to the  
51 counties and municipalities.

**§60-3-13. Advertising or recommendation of brands prohibited.**

1 A store or agency shall not display or distribute any  
2 advertising matter, nor shall a person employed in a state  
3 store or agency advertise or recommend any type, class or  
4 brand of alcoholic liquors.

**§60-3-20. Sales; mode of payment.**

1 The sale of alcoholic liquors in state stores and in state  
2 agencies shall be for cash, money order, certified check,  
3 cashier's check or traveler's check only. In the case of  
4 private clubs as defined in article seven of this chapter,  
5 letters of credit from banks guaranteeing payment of  
6 checks may be filed with the commissioner. Filing of such  
7 letters may permit the commissioner to accept the club's  
8 check.

**§60-3-21. Limitation on amount to be sold.**

1 Not more than ten gallons of alcoholic liquor shall be sold  
2 to a person at one time without the approval of the  
3 commissioner or his representative; but a sale in excess of

4 ten gallons may be made to a religious organization  
5 purchasing wine for sacramental purposes, and sales in case  
6 lots may be made in the discretion of the commissioner:  
7 *Provided*, That this section shall not apply to private clubs  
8 as defined in article seven of this chapter.

**§60-3-22. Sales to certain persons prohibited.**

1 (a) Alcoholic liquors shall not be sold to a person who is:

2 (1) Less than nineteen years of age, unless the person is  
3 at least eighteen years of age as of the first day of July, one  
4 thousand nine hundred eighty-three;

5 (2) An habitual drunkard;

6 (3) Intoxicated;

7 (4) Addicted to the use of narcotic drugs;

8 (5) Mentally incompetent.

9 (b) On and after the first day of October, one thousand  
10 nine hundred eighty-three, alcoholic liquors shall not be  
11 sold to any person who is less than twenty-one years of age  
12 unless such person under the age of twenty-one years first  
13 displays a valid operator's license, chauffeur's license or  
14 non-operator's identification, issued to such person under  
15 the provisions of section eight, article two, chapter  
16 seventeen-b of this code.

**ARTICLE 4. LICENSES.**

**§60-4-3. To whom licensed manufacturer may sell.**

1 A person who is licensed to manufacture alcoholic liquors  
2 in this state may sell such liquors in this state only to the  
3 West Virginia alcohol beverage control commissioner, and  
4 to wholesalers and retailers licensed as provided in this  
5 chapter: *Provided*, That a holder of a farm winery license  
6 may sell wines manufactured by it in this state in  
7 accordance with the provisions of section two, article six of  
8 this chapter. Hours of retail sale by a farm winery shall be  
9 subject to regulation by the commissioner. The  
10 commissioner shall not promulgate any rule or regulation  
11 which prohibits the holder of a farm winery license from the  
12 advertising of a particular brand or brands of wine  
13 produced by it, and the price thereof: *Provided, however*,  
14 That price shall not be advertised in a medium of electronic  
15 communication subject to the jurisdiction of the federal  
16 communications commission. A manufacturer may sell  
17 alcoholic liquors outside of the state.

**ARTICLE 6. MISCELLANEOUS PROVISIONS.****§60-6-6. Transporting alcoholic liquor in excess of ten gallons.**

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

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

- 1 (a) A person shall not:
- 2 (1) Appear in a public place in an intoxicated condition;
- 3 (2) Drink alcoholic liquor in a public place;
- 4 (3) Drink alcoholic liquor in a motor vehicle on any  
5 highway, street, alley or in a public garage;
- 6 (4) Tender a drink of alcoholic liquor to another person  
7 in a public place;
- 8 (5) Possess alcoholic liquor in the amount in excess of  
9 ten gallons, in containers not bearing stamps or seals of the  
10 commission, without having first obtained written  
11 authority from the said commission therefor;
- 12 (6) Possess any alcoholic liquor which was  
13 manufactured or acquired in violation of the provisions of  
14 this chapter;
- 15 (7) Purchase or attempt to purchase alcoholic liquor,  
16 wine or nonintoxicating beer if such person at the time of  
17 the purchase or attempted purchase is under the age of  
18 nineteen unless the person is at least eighteen years of age as  
19 of the first day of July, one thousand nine hundred eighty-  
20 three.
- 21 (b) Any law-enforcement officer may arrest without a  
22 warrant and take the following actions against a person  
23 who, in his presence, violates subdivision (1) of subsection  
24 (a) of this section: (1) If there is some non-intoxicated  
25 person who will accept responsibility for the intoxicated  
26 person, the officer may issue the intoxicated person a  
27 citation specifying a date for appearance before a judicial  
28 officer and release him to the custody of the individual  
29 accepting responsibility: *Provided*, That the issuance of a  
30 citation shall be used whenever feasible; (2) if it does not



31 impose an undue burden on the officer he may, after  
32 issuance of such a citation transport the individual to the  
33 individual's present residence or arrange for such  
34 transportation; (3) if the individual is incapacitated or the  
35 alternatives provided in subdivisions (1) and (2) of this  
36 subsection are not possible, the officer shall transport or  
37 arrange for transportation to the appropriate judicial  
38 officer as defined by section seventeen, article eleven,  
39 chapter twenty-seven of the code; or (4) if the individual is  
40 incapacitated and, in the law-enforcement officer's  
41 judgment, is in need of acute medical attention, that officer  
42 shall arrange for transportation by ambulance or otherwise  
43 to a hospital emergency room. The officer shall accompany  
44 the individual until he is discharged from the emergency  
45 room or admitted to the hospital. If the individual is  
46 released from the emergency room, the officer may proceed  
47 as described in subdivisions (1), (2) and (3) of this  
48 subsection. If the individual is admitted to the hospital, the  
49 officer shall issue a citation to the individual specifying a  
50 date for appearance before a judicial officer.

51 (c) Upon presentment before the proper judicial officer  
52 the law-enforcement officer shall serve as the chief  
53 complaining witness. The judicial officer must make a  
54 finding that there is probative evidence that the individual  
55 may be guilty of the charge of public intoxication. If such  
56 evidence is not presented, the charge shall be dismissed and  
57 the individual released. If sufficient evidence is presented,  
58 the judicial officer shall issue a warrant and establish bail  
59 or issue a summons to the individual. Once a warrant or  
60 summons has been issued, the following actions may be  
61 taken: (1) If the individual is no longer incapacitated, he  
62 may be released; (2) if the individual is still incapacitated  
63 but a nonintoxicated person is available to accept  
64 responsibility for him, he may be released to the responsible  
65 person; or (3) if the individual is still incapacitated and no  
66 responsible person is available, the judicial officer shall  
67 proceed under the provisions of article five or six-a, chapter  
68 twenty-seven of this code.

69 (d) Any law-enforcement officer is hereby authorized  
70 and empowered to arrest and hold in custody, without a  
71 warrant, until complaint may be made before a judicial  
72 officer and a warrant or summons issued, any person who in  
73 the presence of the law-enforcement officer violates any

74 one or more of subdivisions (1) through (6) of subsection (a)  
75 of this section: *Provided*, That the law-enforcement officer  
76 may use reasonable force to prevent harm to himself, the  
77 individual arrested or others in carrying out the provisions  
78 of this section.

79 (e) Any person who violates subdivision (1), subsection  
80 (a) of this section shall be guilty of a misdemeanor, and,  
81 upon conviction thereof, shall be sentenced by a judicial  
82 officer in accordance with the following options: (1) Upon  
83 first offense, a fine of not less than five dollars nor more  
84 than one hundred dollars and not more than sixty days in  
85 jail or completion of an alcohol education program of not  
86 more than six hours' duration at the nearest community  
87 mental health—mental retardation center. If the  
88 individual, prior to conviction, agrees to voluntarily attend  
89 the alcohol education program, the judicial officer may  
90 delay sentencing until the program is completed and upon  
91 completion may dismiss the charges; (2) upon conviction for  
92 a second offense, a fine of not less than five dollars nor more  
93 than one hundred dollars and not more than sixty days in  
94 jail or completion of not less than five hours of alcoholism  
95 counseling at the nearest community mental health—  
96 mental retardation center; (3) upon third and subsequent  
97 convictions, a fine of not less than five dollars nor more than  
98 one hundred dollars and not less than five nor more than *than*  
99 sixty days in jail or a fine of not less <sup>than</sup> ~~five~~ *than* ~~dollars nor more~~ *than*  
100 than one hundred dollars and completion of not less than  
101 five hours of alcoholism counseling at the nearest  
102 community mental health—mental retardation center:  
103 *Provided*, That three convictions for public intoxication  
104 within the preceding six months shall be considered  
105 evidence of alcoholism: *Provided, however*, That for the  
106 educational counseling programs described in this  
107 subsection the community mental health—mental  
108 retardation center may charge each participant its usual  
109 and customary fee and shall certify in writing to the  
110 referring judicial officer the completion or failure to  
111 complete the prescribed program for each individual.

112 (f) A person charged with a violation of subdivision (1)  
113 of subsection (a) of this section who is an alcoholic shall be  
114 found not guilty by reason of addiction and proper  
115 disposition made pursuant to articles five and six-a,  
116 chapter twenty-seven of this code.

117 (g) Any person who violates subdivisions (2), (3) or (4) of  
118 subsection (a) of this section shall be guilty of a  
119 misdemeanor, and, upon conviction thereof, shall be fined  
120 not less than five nor more than one hundred dollars, or  
121 confined in jail not more than sixty days, or both such fine  
122 and imprisonment. Any person who violates subdivision (5)  
123 or (6) of subsection (a) of this section shall be guilty of a  
124 misdemeanor, and upon conviction shall be fined not less  
125 than one hundred dollars nor more than five hundred  
126 dollars, or confined in jail not less than sixty days nor more  
127 than twelve months, or both such fine and imprisonment,  
128 and upon conviction of a second or subsequent offense he  
129 shall be guilty of a felony and shall be confined in the  
130 penitentiary of this state for a period of not less than one  
131 year nor more than three years.

132 (h) Any person who violates subdivision seven of this  
133 section is guilty of a misdemeanor, and, upon conviction  
134 thereof, shall be fined not less than twenty-five dollars nor  
135 more than one hundred dollars, and persons under the age  
136 of eighteen years shall be liable for punishment for  
137 violation of the offense described in subdivision (7),  
138 subsection (a) of this section in the same manner as adults  
139 inasmuch as said section does not authorize the imposition  
140 of a sentence of confinement, the provisions of section one,  
141 article five, chapter forty-nine of this code  
142 notwithstanding.

#### ARTICLE 7. LICENSES TO PRIVATE CLUBS.

##### §60-7-12. Certain acts of licensee prohibited; penalties.

- 1 (a) It shall be unlawful for any licensee, or agent,  
2 employee or member thereof, on such licensee's premises to:
  - 3 (1) Sell or offer for sale any alcoholic liquors other than  
4 from the original package or container;
  - 5 (2) Authorize or permit any disturbance of the peace;  
6 obscene, lewd, immoral or improper entertainment,  
7 conduct or practice; gambling or any slot machine, multiple  
8 coin console machine, multiple coin console slot machine or  
9 device in the nature of a slot machine;
  - 10 (3) Sell, give away, or permit the sale of, gift to, or the  
11 procurement of any alcoholic liquors, for any person under  
12 the age of nineteen years, unless the person is at least  
13 eighteen years of age as of the first day of July, one thousand  
14 nine hundred eighty-three; for any mental incompetent, or

15 for a person who is physically incapacitated due to the  
16 consumption of alcoholic liquor or the use of drugs;

17 (4) Sell, give or dispense alcoholic liquors in or on any  
18 licensed premises or in any rooms directly connected  
19 therewith, between the hours of three o'clock a.m. and one  
20 o'clock p.m. on any Sunday;

21 (5) Permit the consumption by, or serve to, on the  
22 licensed premises any alcoholic liquors, covered by this  
23 article, to any person under the age of nineteen years, unless  
24 the person is at least eighteen years of age as of the first day  
25 of July, one thousand nine hundred eighty-three;

26 (6) On and after the first day of October, one thousand  
27 nine hundred eighty-three, permit the consumption by, or  
28 serve to, on the licensed premises any alcoholic liquors,  
29 covered by this article, to any person who is less than  
30 twenty-one years of age unless such person under the age of  
31 twenty-one years first displays a valid operator's license,  
32 chauffeur's license or non-operator's identification, issued  
33 to such person under the provisions of section eight, article  
34 two, chapter seventeen-b of this code;

35 (7) With the intent to defraud, alter, change or  
36 misrepresent the quality, quantity or brand name of any  
37 alcoholic liquor;

38 (8) Sell or offer for sale any alcoholic liquor to any  
39 person who is not a duly elected or approved dues paying  
40 member in good standing of said private club or a guest of  
41 such member;

42 (9) Permit any minor to sell, furnish or give alcoholic  
43 liquors to any person; or

44 (10) Violate any reasonable rule or regulation of the  
45 commissioner.

46 (b) It shall further be unlawful for any licensee to  
47 advertise in any news media or other means, outside of the  
48 licensee's premises, the fact that alcoholic liquors may be  
49 purchased thereat.

50 (c) Any person who violates any of the foregoing  
51 provisions shall be guilty of a misdemeanor, and, upon  
52 conviction thereof, shall be punished by a fine of not less  
53 than one hundred dollars nor more than five hundred  
54 dollars, or by imprisonment in the county jail for a period  
55 not to exceed one year, or by both fine and imprisonment.

**ARTICLE 8. SALE OF WINES.****§60-8-3. Licenses; fees, general restrictions.**

1 (a) Except as to farm wineries as defined by section  
2 five-a, article one of this chapter, no person may engage in  
3 business in the capacity of a distributor or retailer without  
4 first obtaining a license from the commissioner, nor shall a  
5 person continue to engage in any such activity after his  
6 license has expired, been suspended or revoked. No person  
7 may be licensed simultaneously as a distributor and a  
8 retailer.

9 (b) The commissioner shall collect an annual fee for  
10 licenses issued under this article, as follows:

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

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

15 (3) Fifty dollars per year for a wine tasting license.

16 (c) *the* The license period shall begin on the first day of July  
17 of each year and end on <sup>the</sup> thirtieth day of June of the  
18 following year, and if the initial license is granted for less  
19 than a year, the fee shall be computed in proportion to the  
20 number of quarters remaining in the fiscal year, including  
21 the quarter in which application is made.

22 (d) No retailer may be licensed as a private club as  
23 provided by article seven of this chapter.

24 (e) No retailer may be licensed as a Class A retail dealer  
25 in nonintoxicating beer as provided by article sixteen,  
26 chapter eleven of this code: *Provided*, That a delicatessen  
27 which is a grocery store as defined in section two of this  
28 article and which is licensed as a Class A retail dealer in  
29 nonintoxicating beer, may be a retailer under this article:  
30 *Provided, however*, That any delicatessen licensed in both  
31 such capacities must maintain average monthly sales,  
32 exclusive of sales of wine and nonintoxicating beer which  
33 exceed the average monthly sales of nonintoxicating beer.

34 (f) A retailer under this article may also hold a wine  
35 tasting license authorizing such retailer to serve  
36 complimentary samples of wine in moderate quantities for  
37 tasting. Such retailer shall organize a winetaster's club,  
38 which has at least fifty duly elected or approved dues  
39 paying members in good standing. Such club shall meet on  
40 the retailer's premises not more than one time per week and

41 shall either meet at a time when the premises are closed to  
42 the general public, or shall meet in a separate segregated  
43 facility on the premises to which the general public is not  
44 admitted. Attendance at tastings shall be limited to duly  
45 elected or approved dues paying members and their guests.

46 (g) A retailer who has more than one place of retail  
47 business shall obtain a license for each separate retail  
48 establishment. A retailer's license may be issued only to the  
49 proprietor or owner of a bona fide grocery store or wine  
50 specialty shop.

**§60-8-20. Unlawful acts generally.**

1 It shall be unlawful:

2 (a) For a distributor to sell or deliver wine purchased or  
3 acquired from any source other than a person registered  
4 under the provisions of section six, article eight, chapter  
5 sixty of this code, or for a retailer to sell or deliver wine  
6 purchased or acquired from any source other than a  
7 licensed distributor or a farm winery as defined in section  
8 five-a, article one of this chapter;

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

12 (c) For a licensee, his servants, agents or employees to  
13 sell, furnish or give wine to any person less than nineteen  
14 years of age, unless the person is at least eighteen years of  
15 age as of the first day of July, one thousand nine hundred  
16 eighty-three, or to a mental incompetent, or person who is  
17 physically incapacitated due to the consumption of  
18 alcoholic liquor or the use of drugs;

19 (d) On and after the first day of October, one thousand  
20 nine hundred eighty-three, wine shall not be sold to any  
21 person who is less than twenty-one years of age unless such  
22 person under the age of twenty-one years first displays a  
23 valid operator's license, chauffeur's license or non-  
24 operator's identification, issued to such person under the  
25 provisions of section eight, article two, chapter seventeen-b  
26 of this code;

*OK*  
27 (e) For a license<sup>e</sup> to permit a minor to sell, furnish or give  
28 wine to any person;

29 (f) For a person to violate any reasonable rule or  
30 regulation promulgated by the commissioner under this  
31 article.

**§60-8-23. Duties and powers of commissioner; 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  
4 times for the purpose of inspecting the premises, and  
5 determining the compliance of the licensee with the  
6 provisions of this article and any rules and regulations  
7 promulgated by the commissioner. *At Sea*

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

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

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

20 (3) Restricting the content of wine advertising so as to  
21 prohibit false or misleading claims, or depictions or  
22 descriptions of wine being consumed irresponsibly or  
23 immoderately, or advertising presentations designed to  
24 appeal to persons below the legal drinking age: *Provided,*  
25 That the commissioner shall not promulgate any rule or  
26 regulation which prohibits the advertising of a particular  
27 brand or brands of wine and the price thereof: *Provided,*  
28 *however,* That price shall not be advertised in a medium of  
29 electronic communication subject to the jurisdiction of the  
30 federal communications commission.

31 (d) To issue subpoenas and subpoenas duces tecum for  
32 the purposes of conducting hearings under the provisions of  
33 section twelve of this article, which subpoenas and  
34 subpoenas duces tecum shall be issued in the time, for the  
35 fees, and shall be enforced in the manner specified in  
36 section one, article five, chapter twenty-nine-a of this code  
37 with like effect as if said section one was set fourth in  
38 extenso in this subdivision.

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

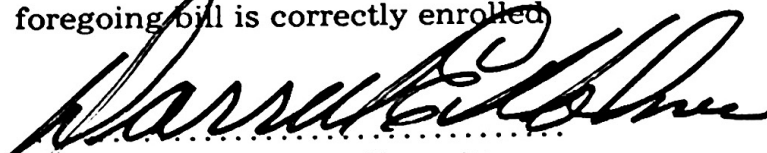
42 All rules and regulations promulgated by the  
43 commissioner pursuant to this article shall be so  
44 promulgated in accordance with the provisions of chapter  
45 twenty-nine-a of this code. The rules and regulations  
46 promulgated pursuant to the prior enactment of this article  
47 during the regular session of the Legislature for the year one  
48 thousand nine hundred and eighty-one and not  
49 disapproved by the Legislature shall remain in full force  
50 and effect to the extent that such rules and regulations are  
51 not abrogated and made null and void by the enactment of  
52 this section.

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

1 It shall be unlawful for a retailer, his servants, agents or  
2 employees to sell or deliver wine on any general or primary  
3 election day, or on any special election day in the locality  
4 where such special election is held, or prior to one o'clock  
5 p.m., or after midnight on Sundays, or between the hours of  
6 midnight and nine o'clock a.m. on weekdays and Saturdays.




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

  
.....  
Chairman Senate Committee


  
.....  
Chairman House Committee

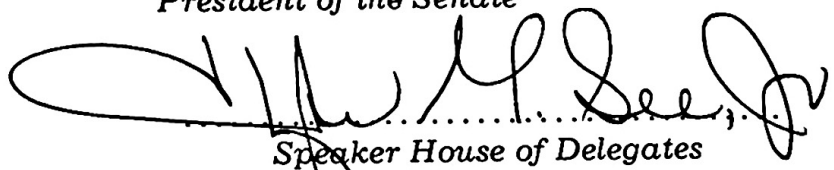
Originated in the Senate.

In 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 approved* ... this the... *26* ...  
day of... *March* ..., 1983

.....  
  
.....  
Governor

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SECY. OF STATE