WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

SENATE BILL NO. 542

(By Mr. Suck)
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 authority to levy and collect a tax upon all purchases within such municipality of intoxicating liquors from the alcohol beverage control commissioner, from any person licensed to sell wine at retail to the public under the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article eight: 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 five percent of the purchase price.

A copy of any ordinance imposing the tax authorized by this section shall be certified by the mayor of the municipality to the West Virginia alcohol beverage 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, from any person licensed to
sell wine at retail pursuant to the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article eight, and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the municipality.

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

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Unlawful acts of licensee; penalties. It shall be unlawful:

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

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

(c) On and after the first day of October, one thousand nine hundred eighty-three, for any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person who is less than twenty-one years of age unless such person under the age of twenty-one years first displays a valid operator's license, chauffeur's license or non-operator's identification, issued
(d) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

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

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

(g) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall state the alcoholic content thereof;
(h) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

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

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

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

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

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

(n) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: Provided, That no licensee shall have in connection with his place of business any loudspeaker located on the outside of the
licensed premises that broadcasts or carries music of any kind;

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

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

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

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

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

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 revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the court. Magistrates shall have concurrent jurisdiction with the circuit court, and any other courts having criminal
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.

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

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

(b) (1) For the purposes of this subsection, a "qualified non-operator" shall mean any citizen of this state who has jurisdiction in their county, for the trial of all misdemeanors arising under this article.
not had issued to him a current operator's or chauffeur's license, or any person enrolled as a full-time student at an institution of higher education or an accredited vocational or trade school in this state who (A) is under the age of twenty-one years, (B) is residing in this state but is domiciled in another state, and (C) who may or may not hold a valid operator's or chauffeur's license from such other state.

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

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

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

(2) A person who allows his operator's or chauffeur's license to expire may apply to the department for renewal thereof. Application shall be made upon a form furnished by the department and shall be accompanied by payment of the fee required by section eight of this article plus an additional fee of one dollar and fifty cents. The commissioner shall determine whether such person
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(3) Each renewal of an operator's or chauffeur's license shall contain a new color photograph of the licensee. By first class mail to the address last known to the department, the commissioner shall notify each person who holds a valid operator's or chauffeur's license of the expiration date of the license. The notice shall be mailed at least thirty days prior to the expiration date of the license and shall include a renewal application form.

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

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

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

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

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

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

(5) To use a false or fictitious name in any application for an operator's or chauffeur's license or non-operator's identification or to knowingly make a false statement or to
knowingly conceal a material fact or otherwise commit a fraud in any such application;

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

(7) To do any act forbidden or fail to perform any act 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.

For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied a tax upon all purchases outside the corporate limits of any municipality of intoxicating liquor from state stores or other agencies of the alcohol beverage control commissioner, of wine from any person licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, and of wine from distributors licensed to sell or distribute wine under the provisions of said article eight. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the commissioner, by the person licensed to sell wine at retail, or by the distributor licensed to sell or distribute wine, as the case may be: 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, or from distributors licensed to sell or distribute wine under the provisions of said article eight, and shall also provide for 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.

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

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

§60-3-20. Sales; mode of payment.

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

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

Not more than ten gallons of alcoholic liquor shall be sold to a person at one time without the approval of the commissioner or his representative; but a sale in excess of
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§60-3-22. Sales to certain persons prohibited.

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

1. Less than nineteen years of age, unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three;
2. An habitual drunkard;
3. Intoxicated;
4. Addicted to the use of narcotic drugs;
5. Mentally incompetent.

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

ARTICLE 4. LICENSES.

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

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

§60-6-6. Transporting alcoholic liquor in excess of ten gallons. The provisions of this chapter shall not prevent a person from bringing into or transporting in this state, in his possession or in his baggage, and not for resale, alcoholic liquor in a quantity not to exceed ten gallons: Provided, That upon written permission of the commissioner, quantities of alcoholic liquor in excess of ten gallons may be transported within this state.

§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. A person shall not:

(a) Appear in a public place in an intoxicated condition;
(b) Drink alcoholic liquor in a public place;
(c) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
(d) Tender a drink of alcoholic liquor to another person in a public place;
(e) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commission, without having first obtained written authority from the said commission therefor;
(f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter;
(g) Purchase or attempt to purchase alcoholic liquor, wine or nonintoxicating beer if such person at the time of the purchase or attempted purchase is under the age of nineteen unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some non-intoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not
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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
one or more of subdivisions (1) through (6) of subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of an alcohol education program of not more than six hours' duration at the nearest community mental health—mental retardation center. If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health—mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health—mental retardation center: Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health—mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1) of subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.
(g) Any person who violates subdivisions (2), (3) or (4) of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in jail not more than sixty days, or both such fine and imprisonment. Any person who violates subdivision (5) or (6) of subsection (a) of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in jail not less than sixty days nor more than twelve months, or both such fine and imprisonment, and upon conviction of a second or subsequent offense he shall be guilty of a felony and shall be confined in the penitentiary of this state for a period of not less than one year nor more than three years.

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

(a) It shall be unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for any person under the age of nineteen years, unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three; for any mental incompetent, or
for a person who is physically incapacitated due to the
consumption of alcoholic liquor or the use of drugs;
(4) Sell, give or dispense alcoholic liquors in or on any
licensed premises or in any rooms directly connected
therewith, between the hours of three o'clock a.m. and one
o'clock p.m. on any Sunday;
(5) Permit the consumption by, or serve to, on the
licensed premises any alcoholic liquors, covered by this
article, to any person under the age of nineteen years, unless
the person is at least eighteen years of age as of the first day
of July, one thousand nine hundred eighty-three;
(6) On and after the first day of October, one thousand
nine hundred eighty-three, permit the consumption by, or
serve to, on the licensed premises any alcoholic liquors,
covered by this article, to any person who is less than
twenty-one years of age unless such person under the age of
twenty-one years first displays a valid operator's license,
chauffeur's license or non-operator's identification, issued
to such person under the provisions of section eight, article
two, chapter seventeen-b of this code;
(7) With the intent to defraud, alter, change or
misrepresent the quality, quantity or brand name of any
alcoholic liquor;
(8) Sell or offer for sale any alcoholic liquor to any
person who is not a duly elected or approved dues paying
member in good standing of said private club or a guest of
such member;
(9) Permit any minor to sell, furnish or give alcoholic
liquors to any person; or
(10) Violate any reasonable rule or regulation of the
commissioner.
(b) It shall further be unlawful for any licensee to
advertise in any news media or other means, outside of the
licensee's premises, the fact that alcoholic liquors may be
purchased thereat.
(c) Any person who violates any of the foregoing
provisions shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be punished by a fine of not less
than one hundred dollars nor more than five hundred
dollars, or by imprisonment in the county jail for a period
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
distributor's license.
12 (2) One hundred fifty dollars per year for a retailer's
license.
13 (3) Fifty dollars per year for a wine tasting license.
14 (c) The license period shall begin on the first day of July
15 of each year and end on thirtieth day of June of the
16 following year, and if the initial license is granted for less
17 than a year, the fee shall be computed in proportion to the
18 number of quarters remaining in the fiscal year, including
19 the quarter in which application is made.
20 (d) No retailer may be licensed as a private club as
provided by article seven of this chapter.
21 (e) No retailer may be licensed as a Class A retail dealer
22 in nonintoxicating beer as provided by article sixteen,
chapter eleven of this code: Provided, That a delicatessen
23 which is a grocery store as defined in section two of this
24 article and which is licensed as a Class A retail dealer in
25 nonintoxicating beer, may be a retailer under this article:
Provided, however, That any delicatessen licensed in both
26 such capacities must maintain average monthly sales,
27 exclusive of sales of wine and nonintoxicating beer which
28 exceed the average monthly sales of nonintoxicating beer.
29 (f) A retailer under this article may also hold a wine
30 tasting license authorizing such retailer to serve
31 complimentary samples of wine in moderate quantities for
32 tasting. Such retailer shall organize a winetaster's club,
33 which has at least fifty duly elected or approved dues
34 paying members in good standing. Such club shall meet on
35 the retailer's premises not more than one time per week and
shall either meet at a time when the premises are closed to
the general public, or shall meet in a separate segregated
facility on the premises to which the general public is not
admitted. Attendance at tastings shall be limited to duly
elected or approved dues paying members and their guests.

(g) 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.

§60-8-20. Unlawful acts generally.
1 It shall be unlawful:
2 (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;
3 (b) For a licensee under this article to acquire,
transport, possess for sale, or sell wine other than in the
original package;
4 (c) For a licensee, his servants, agents or employees to
sell, furnish or give wine to any person less than nineteen
years of age, unless the person is at least eighteen years of
age as of the first day of July, one thousand nine hundred
eighty-three, or to a mental incompetent, or person who is
physically incapacitated due to the consumption of
alcoholic liquor or the use of drugs;
5 (d) On and after the first day of October, one thousand
nine hundred eighty-three, wine shall not be sold to any
person who is less than twenty-one years of age unless such
person under the age of twenty-one years first displays a
valid operator's license, chauffeur's license or non-
operator's identification, issued to such person under the
provisions of section eight, article two, chapter seventeen-b
of this code;
6 (e) For a license to permit a minor to sell, furnish or give
wine to any person;
7 (f) For a person to violate any reasonable rule or
regulation promulgated by the commissioner under this
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.
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.
All rules and regulations promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provisions of chapter twenty-nine-a of this code. The rules and regulations promulgated pursuant to the prior enactment of this article during the regular session of the Legislature for the year one thousand nine hundred and eighty-one and not disapproved by the Legislature shall remain in full force and effect to the extent that such rules and regulations are not abrogated and made null and void by the enactment of this section.

§60-8-34. When retail sales prohibited.
1. 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 on any special election day in the locality where such special election is held, or prior to one o'clock p.m., or after midnight on Sundays, or between the hours of 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.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 26th day of March, 1983

[Signature]
Governor