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APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 542

(By Mr. Jucker)



PASSED March 12, 1983

In Effect ninety days from Passage



ENROLLED

Senate Bill No. 542

(BY MR. TUCKER)

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

AN ACT to amend and reenact section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section 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. *De Ju*

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
99 sixty days in jail or a fine of not less ^{than} five dollars nor more
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.

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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.

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16 (c) ~~The license period shall begin on the first day of July~~
17 ~~of each year and end on~~ ^{the} 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;

27 (e) For a license^e 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.

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§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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

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

.....
[Handwritten Signature]
.....
Governor



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