

MO: 339

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986



ENROLLED

Finance Committee Substitute for Judiciary Committee
Substitute for SENATE BILL NO. 339

(By Senator *Jankovich, Mr. President, et al*)



PASSED *March 8,* 1986

In Effect *July 1, 1986* Passage



ENROLLED

FINANCE

COMMITTEE SUBSTITUTE

FOR

JUDICIARY

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 339

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,
original sponsors)

[Passed March 8, 1986; to take effect July 1, 1986.]

AN ACT to amend and reenact sections one and five, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three of said chapter; to further amend said article three by adding thereto a new section, designated section twenty-two-a; to amend and reenact section fifteen, article four of said chapter; to amend and reenact section twelve, article seven of said chapter; to further amend said article seven by adding thereto a new section, designated section twelve-a; to amend and reenact sections two, three, twenty, twenty-three, twenty-nine and thirty-four, article eight of said chapter; and to further amend said article eight by adding thereto a new section, designated section twenty-a, all relating to the regulation

and control of alcoholic liquors generally; increasing from nineteen to twenty-one years the legal age for consumption of alcoholic liquors; general provisions; purpose of chapter; declaration of legislative findings, policy and intent; definitions; sales by commissioner; sales to certain persons prohibited; unlawful acts by persons and the penalties therefor; licenses; amount of license fees; licenses to private clubs; certain acts of licensee prohibited; criminal penalties; unlawful acts by persons and the penalties therefor; sales of wines; definitions; licenses; fees; general restrictions; special license for festival or fair; private wine restaurant license; unlawful acts generally; unlawful acts by persons and the penalties therefor; duties and powers of commissioner; rules and regulations; bond required of distributors and suppliers and amount thereof; and when retail sales and sales by private wine restaurant prohibited.

Be it enacted by the Legislature of West Virginia:

That sections one and five, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-two, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section twenty-two-a; that section fifteen, article four of said chapter be amended and reenacted; that section twelve, article seven of said chapter be amended and reenacted; that said article seven be further amended by adding thereto a new section, designated section twelve-a; that sections two, three, twenty, twenty-three, twenty-nine and thirty-four, article eight of said chapter be amended and reenacted; and that said article eight be further amended by adding thereto a new section, designated section twenty-a, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-1. Purpose of chapter; declaration of legislative findings, policy and intent.

1 The purpose of this chapter is to give effect to the
2 mandate of the people expressed in the repeal of the state
3 prohibition amendment; and it is hereby found by the
4 Legislature and declared to be the public policy of this state
5 to regulate and control the manufacture, sale, distribution,

6 transportation, storage and consumption of alcoholic
7 liquors and at the same time to assure the greatest degree of
8 personal freedom consistent with the health, safety,
9 welfare, peace and good morals of the people of this state.
10 To these ends the police power of this state is pledged to the
11 sound control and the temperate use of alcoholic liquors. In
12 order to further promote and foster the hereinabove policy
13 of the Legislature, the provisions of this chapter and of the
14 rules and regulations promulgated pursuant thereto shall
15 be construed so as to accomplish and effectuate these stated
16 purposes.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin
3 and shall include synthetic ethyl alcohol but not denatured
4 alcohol.

5 "Beer" shall mean any beverage obtained by the
6 fermentation of barley, malt, hops, or any other similar
7 product or substitute, and containing more alcohol than
8 that of nonintoxicating beer.

9 "Nonintoxicating beer" shall mean any beverage,
10 obtained by the fermentation of barley, malt, hops, or
11 similar products or substitute and containing not more
12 alcohol than that specified by section two, article sixteen,
13 chapter eleven of this code.

14 "Wine" shall mean any alcoholic beverage obtained by
15 the fermentation of the natural content of fruits, or other
16 agricultural products, containing sugar.

17 "Spirits" shall mean any alcoholic beverage obtained by
18 distillation and mixed with potable water and other
19 substances in solution, and includes brandy, rum, whiskey,
20 cordials and gin.

21 "Alcoholic liquor" shall include alcohol, beer, wine and
22 spirits, and any liquid or solid capable of being used as a
23 beverage, but shall not include nonintoxicating beer.

24 "Original package" shall mean any closed or sealed
25 container or receptacle used for holding alcoholic liquor.

26 "Sale" shall mean any transfer, exchange or barter in any
27 manner or by any means, for a consideration, and shall
28 include all sales made by principal, proprietor, agent or
29 employee.

30 "Selling" shall include solicitation or receipt of orders;
31 possession for sale; and possession with intent to sell.

32 "Person" shall mean an individual, firm, partnership,
33 limited partnership, corporation or voluntary association.

34 "Manufacture" means to distill, rectify, ferment, brew,
35 make, mix, concoct, process, blend, bottle, or fill an original
36 package with any alcoholic liquor.

37 "Manufacturer" shall mean any person engaged in the
38 manufacture of any alcoholic liquor, and among others
39 includes a distiller, a rectifier, a wine maker and a brewer.

40 "Brewery" shall mean an establishment where beer is
41 manufactured or in any way prepared.

42 "Winery" shall mean an establishment where wine is
43 manufactured or in any way prepared.

44 "Distillery" shall mean an establishment where alcoholic
45 liquor other than wine or beer is manufactured or in any
46 way prepared.

47 "Public place" shall mean any place, building or
48 conveyance to which the public has, or is permitted to have
49 access, including restaurants, soda fountains, hotel dining
50 rooms, lobbies, and corridors of hotels and any highway,
51 street, lane, park or place of public resort or amusement:
52 *Provided*, That the term "public place" shall not mean or
53 include any of the above-named places or any portion or
54 portions thereof which qualify and are licensed under the
55 provisions of this chapter to sell alcoholic liquors for
56 consumption on the premises.

57 "State liquor store" shall mean a store established and
58 operated by the commission under this chapter for the sale
59 of alcoholic liquor in the original package for consumption
60 off the premises.

61 "An agency" shall mean a drugstore, grocery store or
62 general store designated by the commission as a retail
63 distributor of alcoholic liquor for the West Virginia alcohol
64 beverage control commissioner.

65 "Department" shall mean the organization through
66 which the commission exercises powers imposed upon it by
67 this chapter.

68 "Commissioner" or "commission" shall mean the West
69 Virginia alcohol beverage control commissioner.

70 "Intoxicated" shall mean having one's faculties impaired
71 by alcohol or other drugs to the point where physical or
72 mental control or both are markedly diminished.

ARTICLE 3. SALES BY COMMISSIONER.

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

- 1 Alcoholic liquors shall not be sold to a person who is:
- 2 (1) Less than twenty-one years of age;
- 3 (2) An habitual drunkard;
- 4 (3) Intoxicated;
- 5 (4) Addicted to the use of any controlled substance as
- 6 defined by any of the provisions of chapter sixty-a of this
- 7 code; or
- 8 (5) Mentally incompetent.

§60-3-22a. Unlawful acts by persons.

- 1 (a) Any person under the age of twenty-one years who,
- 2 for the purpose of purchasing alcoholic liquors from a state
- 3 liquor store or an agency, misrepresents his or her age, or
- 4 who for such purpose presents or offers any written
- 5 evidence of age which is false, fraudulent or not actually his
- 6 or her own, or who illegally attempts to purchase alcoholic
- 7 liquors from a state liquor store or an agency, is guilty of a
- 8 misdemeanor, and, upon conviction thereof, shall be fined
- 9 in an amount not to exceed fifty dollars or shall be
- 10 imprisoned in the county jail for a period not to exceed
- 11 seventy-two hours, or both such fine and imprisonment, or,
- 12 in lieu of such fine and imprisonment, may, for the first
- 13 offense, be placed on probation for a period not exceeding
- 14 one year.
- 15 (b) Any person who shall knowingly buy for, give to or
- 16 furnish to anyone under the age of twenty-one to whom they
- 17 are not related by blood or marriage, any alcoholic liquors
- 18 from whatever source, is guilty of a misdemeanor and shall,
- 19 upon conviction thereof, be fined in an amount not to
- 20 exceed one hundred dollars or shall be imprisoned in the
- 21 county jail for a period not to exceed ten days, or both such
- 22 fine and imprisonment.

ARTICLE 4. LICENSES.

§60-4-15. Amount of license fees.

- 1 A person to whom a license is issued under the provisions
- 2 of this chapter shall pay annually to the commissioner a
- 3 license fee as follows, for:
- 4 (1) Distilleries, one thousand five hundred dollars;

- 5 (2) Wineries, one thousand five hundred dollars;
- 6 (3) Breweries, two hundred fifty dollars;
- 7 (4) Bottling plants, one hundred dollars;
- 8 (5) Wholesale druggists, fifty dollars;
- 9 (6) Institutions, ten dollars;
- 10 (7) Industrial use, fifty dollars;
- 11 (8) Industrial plants producing alcohol, two hundred
- 12 fifty dollars;
- 13 (9) Retail druggists, ten dollars;
- 14 (10) Farm wineries, fifty dollars.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal 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 or to any person
 - 12 less than twenty-one years of age;
 - 13 (4) Sell, give away, or permit the sale of, gift to, or the
 - 14 procurement of any alcoholic liquors, for or to any mental
 - 15 incompetent, or for a person who is physically
 - 16 incapacitated due to consumption of alcoholic liquor or the
 - 17 use of drugs;
 - 18 (5) Sell, give or dispense alcoholic liquors in or on any
 - 19 licensed premises or in any rooms directly connected
 - 20 therewith, between the hours of three o'clock a.m. and one
 - 21 o'clock p.m. on any Sunday;
 - 22 (6) Permit the consumption by, or serve to, on the
 - 23 licensed premises any alcoholic liquors, covered by this
 - 24 article, to any person who is less than twenty-one years of
 - 25 age;
 - 26 (7) With the intent to defraud, alter, change or
 - 27 misrepresent the quality, quantity or brand name of any
 - 28 alcoholic liquor;

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

33 (9) Permit any person who is less than eighteen years of
34 age to sell, furnish or give alcoholic liquors to any person; or

35 (10) Violate any reasonable rule or regulation of the
36 commissioner.

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

41 (c) Any person who violates any of the foregoing
42 provisions shall be guilty of a misdemeanor, and, upon
43 conviction thereof, shall be punished by a fine of not less
44 than one hundred dollars nor more than five hundred
45 dollars, or by imprisonment in the county jail for a period
46 not to exceed one year, or by both fine and imprisonment.

§60-7-12a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who,
2 for the purpose of purchasing nonintoxicating beer or
3 alcoholic liquors from a licensee, misrepresents his or her
4 age, or who for such purpose presents or offers any written
5 evidence of age which is false, fraudulent or not actually his
6 or her own, or who illegally attempts to purchase
7 nonintoxicating beer or alcoholic liquors from a licensee, is
8 guilty of a misdemeanor, and, upon conviction thereof, shall
9 be fined in an amount not to exceed fifty dollars or shall be
10 imprisoned in the county jail for a period not to exceed
11 seventy-two hours, or both such fine and imprisonment, or,
12 in lieu of such fine and imprisonment, may, for the first
13 offense, be placed on probation for a period not exceeding
14 one year.

15 (b) Any person who shall knowingly buy for, give to or
16 furnish to anyone under the age of twenty-one to whom they
17 are not related by blood or marriage, any nonintoxicating
18 beer or alcoholic liquors purchased from a licensee, is guilty
19 of a misdemeanor and shall, upon conviction thereof, be
20 fined in an amount not to exceed one hundred dollars or
21 shall be imprisoned in the county jail for a period not to
22 exceed ten days, or both such fine and imprisonment.

ARTICLE 8. SALE OF WINES.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West
4 Virginia alcohol beverage control commissioner.

5 "Distributor" means any person whose principal place of
6 business is within the state of West Virginia, and who is
7 engaged in selling or distributing wine to retailers or
8 private wine restaurants and selling or distributing port,
9 sherry and Madeira wines to wine specialty shops under
10 authority of this article and actually maintains a warehouse
11 in this state for the distribution of wine.

12 "Fortified wine" shall mean any wine to which brandy or
13 other alcohol has been added and shall include dessert
14 wines which are not fortified.

15 "Grocery store" means any retail establishment,
16 commonly known as a grocery store, supermarket or
17 delicatessen, where food, food products and supplies for the
18 table are sold for consumption off the premises with
19 average monthly sales (exclusive of sales of wines) of not
20 less than three thousand dollars and an average monthly
21 inventory (exclusive of inventory of wine) of not less than
22 three thousand dollars. The term "grocery store" shall also
23 include and mean a separate and segregated portion of any
24 other retail store which is dedicated solely to the sale of
25 food, food products and supplies for the table for
26 consumption off the premises with average monthly sales
27 with respect to such separate or segregated portion
28 (exclusive of sales of wine) of not less than three thousand
29 dollars and an average monthly inventory (exclusive of
30 inventory of wine) of not less than three thousand dollars.

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

33 "Private wine restaurant" means a restaurant which: (1)
34 Is a partnership, limited partnership, corporation,
35 unincorporated association or other business entity which
36 has as its principal purpose the business of serving meals on
37 its premises to its members and their guests; (2) Is licensed
38 under the provisions of this article as to all of its premises or

39 as to a separate segregated portion of its premises to serve
40 wine to its members and their guests when such sale
41 accompanies the serving of food or meals; and (3) Admits
42 only duly elected and approved dues paying members and
43 their guests while in the company of a member, and does not
44 admit the general public.

45 "Retailer" means any person licensed to sell wine at retail
46 to the public at his established place of business for off-
47 premises consumption and who is licensed to do so under
48 authority of this article.

49 "Supplier" means any manufacturer, producer,
50 processor, distributor or supplier of wine who sells or offers
51 to sell or solicits or negotiates the sale of wine to any
52 licensed West Virginia distributor.

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

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

58 "Varietal wine" means any wine labeled according to the
59 grape variety from which such wine is made.

60 "Vintage wine" or "vintage-dated wine" means wines
61 from which the grapes used to produce such wine are
62 harvested during a particular year or wines produced from
63 the grapes of a particular harvest in a particular region of
64 production.

65 "Wine" means any alcoholic beverage obtained by the
66 natural fermentation of the natural content of grapes, other
67 fruits or honey or other agricultural products containing
68 sugar and to which no alcohol has been added and shall
69 include table wine, and shall exclude fortified wine and
70 shall also exclude any product defined as or embraced
71 within the definition of nonintoxicating beer under the
72 provisions of article sixteen, chapter eleven of this code.

73 "Wine specialty shop" means a retailer who shall deal
74 principally in the sale of table wine, certain fortified wines,
75 wine accessories and food or foodstuffs normally associated
76 with wine and (1) who shall maintain a representative
77 number of such wines for sale in his inventory which are
78 designated by label as varietal wine, vintage, generic and/or
79 according to region of production and the inventory shall
80 contain not less than fifteen percent vintage or vintage-

81 dated wine by actual bottle count and (2) who, any other
82 provisions of this code to the contrary notwithstanding,
83 may maintain an inventory of port, sherry and madiera
84 wines having an alcoholic content of not more than twenty-
85 two percent alcohol by volume and which have been
86 matured in wooden barrels or casks.

§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, retailer or private
4 wine restaurant without first obtaining a license from the
5 commissioner, nor shall a person continue to engage in any
6 such activity after his license has expired, been suspended
7 or revoked. No person may be licensed simultaneously as a
8 distributor and a retailer, as a distributor and a private
9 wine restaurant, or as a retailer and a private wine
10 restaurant.

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

13 (1) Twenty-five hundred dollars per year for a
14 distributor's license and each separate warehouse or other
15 facility from which a distributor sells, transfers or delivers
16 wine shall be separately licensed and there shall be
17 collected with respect to each such location the annual
18 license fee of twenty-five hundred dollars as herein
19 provided.

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

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

23 (4) Fifty dollars for each sales representative of or
24 employed by a licensed distributor.

25 (5) Two hundred fifty dollars per year for a private wine
26 restaurant license, and each separate restaurant from
27 which a licensee sells wine shall be separately licensed and
28 there shall be collected with respect to each such location
29 the annual license fee of two hundred fifty dollars as herein
30 provided.

31 (c) The license period shall begin on the first day of July
32 of each year and end on the thirtieth day of June of the
33 following year, and if granted for a less period, the same
34 shall be computed semiannually in proportion to the
35 remainder of the fiscal year.

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

38 (e) No retailer may be licensed as a Class A retail dealer
39 in nonintoxicating beer as provided by article sixteen,
40 chapter eleven of this code: *Provided*, That a delicatessen
41 which is a grocery store as defined in section two of this
42 article and which is licensed as a Class A retail dealer in
43 nonintoxicating beer, may be a retailer under this article:
44 *Provided, however*, That any delicatessen licensed in both
45 such capacities must maintain average monthly sales
46 exclusive of sales of wine and nonintoxicating beer which
47 exceed the average monthly sales of nonintoxicating beer.

48 (f) A retailer under this article may also hold a wine
49 tasting license authorizing such retailer to serve
50 complimentary samples of wine in moderate quantities for
51 tasting. Such retailer shall organize a winetaster's club,
52 which has at least fifty duly elected or approved dues
53 paying members in good standing. Such club shall meet on
54 the retailer's premises not more than one time per week and
55 shall either meet at a time when the premises are closed to
56 the general public, or shall meet in a separate segregated
57 facility on the premises to which the general public is not
58 admitted. Attendance at tastings shall be limited to duly
59 elected or approved dues paying members and their guests.

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

65 (h) The commissioner may issue a special license for the
66 retail sale of wine at any festival or fair which is endorsed or
67 sponsored by the governing body of a municipality or a
68 county commission. Such special license shall be issued for
69 a term of no longer than ten consecutive days and the fee
70 therefore shall be two hundred fifty dollars regardless of
71 the term of the license. The festival or fair committee or the
72 governing body shall designate a person to organize a club
73 under a name which includes the name of the festival or fair
74 and the words "wine club." The license shall be issued in the
75 name of the wine club. A licensee may not commence the
76 sale of wine as provided for in this subsection until the wine
77 club has at least fifty dues paying members who have been

78 enrolled and to whom membership cards have been issued.
79 Thereafter, new members may be enrolled and issued
80 membership cards at any time during the period for which
81 the license is issued. A wine club licensed under the
82 provisions of this subsection may sell wine only to its
83 members, and in portions not to exceed eight ounces per
84 serving. Such sales shall take place on premises or in an area
85 cordoned or segregated so as to be closed to the general
86 public, and the general public shall not be admitted to such
87 premises or area. A licensee under the provisions of this
88 subsection shall be authorized to serve complimentary
89 samples of wine in moderate quantities for tasting.

90 A license issued under the provisions of this subsection
91 and the licensee holding such license shall be subject to all
92 other provisions of this article and the rules, regulations
93 and orders of the commissioner relating to such special
94 license: *Provided*, That the commissioner may by rule,
95 regulation, or order provide for certain waivers or
96 exceptions with respect to such provisions, rules,
97 regulations, or order as the circumstances of each such
98 festival or fair may require, including, without limitation,
99 the right to revoke or suspend any license issued pursuant to
100 this section prior to any notice or hearing notwithstanding
101 the provisions of section twelve of this article: *Provided*,
102 *however*, That under no circumstances shall the provisions
103 of subsections (c) or (d), section twenty of this article be
104 waived nor shall any exception be granted with respect
105 thereto.

106 A license issued under the provisions of this subsection
107 and the licensee holding such license shall not be subject to
108 the provisions of subsection (g) of this section.

109 (i) A license to sell wine granted to a private wine
110 restaurant under the provisions of this article entitles the
111 operator to sell and serve wine, for consumption on the
112 premises of the licensee, when such sale accompanies the
113 serving of food or a meal to its members and their guests in
114 accordance with the provisions of this article. Such
115 licensees are authorized to keep and maintain on their
116 premises a supply of wine in such quantities as may be
117 appropriate for the conduct of operations thereof. Any sale
118 of wine so made shall be subject to all restrictions set forth
119 in section twenty of this article. A private wine restaurant

120 may also be licensed as a Class A retail dealer in
121 nonintoxicating beer as provided by article sixteen, chapter
122 eleven of this code.

123 (j) With respect to subdivisions (h) and (i) of this section,
124 the commissioner shall promulgate rules and regulations in
125 regard to the form of the applications, the suitability of both
126 the applicant and location of the licensed premises and such
127 other rules and regulations deemed necessary to carry the
128 provisions of such subsections into effect.

§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) Unless otherwise specifically provided for by the
10 provisions of this article, for a licensee under this article to
11 acquire, transport, possess for sale, or sell wine other than
12 in the original package;

13 (c) For a licensee, his servants, agents or employees to
14 sell, furnish or give wine to any person less than twenty-one
15 years of age, or to a mental incompetent, or person who is
16 physically incapacitated due to the consumption of
17 alcoholic liquor or the use of drugs;

18 (d) For a licensee to permit a person who is less than
19 eighteen years of age to sell, furnish or give wine to any
20 person;

21 (e) For a distributor to sell or deliver any brand of wine
22 purchased or acquired from any source other than the
23 primary source of supply of the wine which granted the
24 distributor the right to sell such brand at wholesale. For the
25 purposes of this article, "primary source of supply" means
26 the vintner of the wine, the importer of a foreign wine who
27 imports the wine into the United States, the owner of a wine
28 at the time it becomes a marketable product, the bottler of a
29 wine, or an agent specifically authorized by any of the
30 above-enumerated persons to make a sale of the wine to a
31 West Virginia distributor: *Provided*, That no retailer shall

32 sell or deliver wine purchased or acquired from any source
33 other than a distributor licensed as such in this state:
34 *Provided, however,* That nothing herein shall be deemed to
35 prohibit sales of convenience between distributors licensed
36 in this state wherein one such distributor sells, transfers or
37 delivers to another such distributor a particular brand or
38 brands for sale at wholesale, of which brand or brands such
39 other distributor may be temporarily out of stock. The
40 commissioner shall promulgate such rules or regulations as
41 may be necessary to carry this subsection into effect;

42 (f) For a person to violate any reasonable rule or
43 regulation promulgated by the commissioner under this
44 article;

45 (g) Nothing in this article, nor any rule or regulation of
46 the commissioner, shall prevent or be deemed to prohibit
47 any licensee from employing any person who is at least
48 eighteen years of age to serve in any licensee's lawful
49 employment, including the sale or delivery of wine under
50 the provisions of this article. With the prior approval of the
51 commissioner, a licensee whose principal business is the
52 sale of food or consumer goods or the providing of
53 recreational activities, including, but not limited to,
54 nationally franchised fast food outlets, family-oriented
55 restaurants, bowling alleys, drug stores, discount stores,
56 grocery stores, and convenience stores, may employ persons
57 who are less than eighteen years of age but at least sixteen
58 years of age: *Provided,* That such person's duties shall not
59 include the sale or delivery of nonintoxicating beer or
60 alcoholic liquors: *Provided, however,* That the
61 authorization to employ such persons under the age of
62 eighteen years shall be clearly indicated on the licensee's
63 license.

§60-8-20a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who,
2 for the purpose of purchasing wine or other alcoholic
3 liquors from a licensee, misrepresents his or her age, or who
4 for such purpose presents or offers any written evidence of
5 age which is false, fraudulent or not actually his or her own,
6 or who illegally attempts to purchase wine or other
7 alcoholic liquors, is guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined in an amount not to exceed

9 fifty dollars or shall be imprisoned in the county jail for a
10 period not to exceed seventy-two hours, or both such fine
11 and imprisonment, or, in lieu of such fine and
12 imprisonment, may, for the first offense, be placed on
13 probation for a period not exceeding one year.

14 (b) Any person who shall knowingly buy for, give to or
15 furnish wine or other alcoholic liquors from any source to
16 anyone under the age of twenty-one to whom they are not
17 related by blood or marriage, is guilty of a misdemeanor and
18 shall, upon conviction thereof, be fined in an amount not to
19 exceed one hundred dollars or shall be imprisoned in the
20 county jail for a period not to exceed ten days, or both such
21 fine and imprisonment.

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

1 (a) The commissioner is hereby authorized:

2 (1) To enforce the provisions of this article.

3 (2) 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 (3) In addition to rules and regulations relating to the
9 tax imposed by section four of this article or otherwise
10 authorized by this article, to promulgate reasonable rules
11 and regulations as he deems necessary for the execution and
12 enforcement of the provisions of this article, which may
13 include, but shall not be limited to:

14 (A) The transport, use, handling, service and sale of
15 wine;

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

21 (C) Restricting the content of wine advertising so as to
22 prohibit false or misleading claims, or depictions or
23 descriptions of wine being consumed irresponsibly or
24 immoderately, or advertising presentations designed to
25 appeal to persons below the legal drinking age: *Provided*,
26 That the commissioner shall not promulgate any rule or

27 regulation which prohibits the advertising of a particular
28 brand or brands of wine and the price thereof: *Provided*,
29 *however*, That price shall not be advertised in a medium of
30 electronic communication subject to the jurisdiction of the
31 federal communications commission.

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

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

43 (c) Except as may be in this article to the contrary, the
44 commissioner shall not have authority by rule or regulation
45 or otherwise to regulate markups, prices, discounts,
46 allowances, or other terms of sale at which wine may be
47 purchased or sold by wine distributors or licensees
48 authorized to sell wine at retail or to change, nullify or vary
49 the terms of any agreement between a wine manufacturer or
50 supplier and a wine distributor, but nothing herein shall be
51 deemed to authorize or permit any discriminatory practice
52 prohibited by subsection (a), section thirty-one of this
53 article.

54 (d) All rules and regulations promulgated by the
55 commissioner pursuant to this article shall be so
56 promulgated in accordance with the provisions of chapter
57 twenty-nine-a of this code. The rules and regulations
58 promulgated pursuant to the prior enactment of this article
59 and not disapproved by the Legislature shall remain in full
60 force and effect to the extent that such rules and regulations
61 are not abrogated and made null and void by the
62 reenactment of ~~the~~ sections of this article during the
63 regular session of the Legislature for the year one thousand
64 nine hundred eighty-six. Any rule or regulation which is
65 inconsistent or contrary in any way to any provision of this
66 article now or hereafter enacted are null and void.

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

1 Each applicant for a distributor's license or each

2 company registered as a supplier shall furnish at the time of
3 application a bond with a corporate surety authorized to
4 transact business in this state, payable to the state, and
5 conditioned on the payment of all taxes and fees herein
6 prescribed and on the faithful performance of and
7 compliance with the provisions of this article.

8 The penal sum of the bond for distributors shall be ten
9 thousand dollars, and the penal sum of the bond for
10 suppliers shall be twenty-five thousand dollars. Each
11 distributor shall be required to furnish separate bond for
12 each location or separate place of business from which wine
13 is distributed, sold, or delivered. Revocation or forfeiture of
14 the bond furnished for any such location may, in the
15 discretion of the commissioner, cause the revocation or
16 forfeiture of all such bonds furnished by the distributor
17 suffering such revocation or forfeiture.

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

1 It shall be unlawful for a retailer, or a private wine
2 restaurant licensee, his servants, agents or employees to sell
3 or deliver wine between the hours of two o'clock a.m. and
4 one o'clock p.m. on Sundays, or between the hours of two
5 o'clock a.m. and seven o'clock a.m. on weekdays and
6 Saturdays.

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

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fulber
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Jedd C. Wick
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Sam Tomlinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *25th*
March
day of 1986.

Richard S. Roane, Jr.
.....
Governor



RECEIVED TO THE

GOVERNOR

Date 3/20/86

Time 4:07 p.m.

DEPT. OF STATE
1000 MAR 23 PM 4:30
DEPARTMENT OF STATE
SECRETARIAT OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86