

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

ENROLLED

Committee Substitute for
SENATE BILL NO. 337

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

PASSED February 27, 1990

In Effect from Passage

no. 337

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 337

(By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed February 27, 1990; in effect from passage.]

AN ACT to amend and reenact section nine-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter sixty of said code by adding thereto a new article, designated article three-a; and to amend and reenact section eleven, article seven of said chapter sixty, all relating to taxation and state control of alcoholic liquor; relating to exceptions to consumer sales tax exemptions for private clubs purchasing alcoholic liquor; declaring that the retail sale of liquor should be made through private retail licensees licensed by the state; providing a short title; providing legislative findings and declarations and a legislative purpose; specifying that the sale of liquor by retail licensees shall be lawful; relating to the discontinuing of retail liquor sales by the state; defining terms; creating the retail liquor licensing board; relating to members, qualifications, terms, meetings, officers, compensation, vacancies, quorum and costs of operation; enumerating powers and duties of board; relating to general powers and duties of board and alcohol beverage control

commissioner; authorizing market zones and designated areas within such market zones and Class A and Class B retail licenses with respect thereto; relating to the number of Class A and Class B retail licenses and retail outlets in each market zone; establishing application requirements for retail licenses and identifying retail licensee qualifications and disqualifications; granting broad investigative powers; prohibiting judicial review of a decision denying an application after hearing; establishing notice and bidding procedures and bonding requirements; relating to payment of bid price; providing a preference for resident bidders; providing for annual retail license fees and annual renewal of retail licenses; providing that each retail license shall expire on June thirty in the year two thousand, prior to which time new retail licenses shall be issued by following the bidding and other procedures specified; providing for annual reports to the joint committee on government and finance; requiring approval for the sale, assignment or transfer of retail licenses; relating to surrender of retail licenses; providing certain restrictions on the location of retail outlets and days and hours when liquor may be sold by retail licensees; relating to wholesale prices of liquor; relating to maximum wholesale markup percentage for three years; requiring all liquor, other than wine and fortified wine, sold by retail licensees to be purchased from alcohol beverage control commissioner; requiring all liquor, other than wine and fortified wine, sold by private clubs to be purchased from retail licensees; relating to the transportation and storage of liquor; limiting amount of liquor which may be sold to any person at one time; relating to sales of nonintoxicating beer; imposing tax on sales of liquor by retail licensees; requiring posting of informational sign; relating to records and inspection thereof; prohibiting certain acts by persons other than retail licensees; prohibiting certain acts by persons and retail licensees; authorizing the imposition and collection of civil penalties; relating to the suspension or revocation of a retail license; relating to notice, hearing and appeal procedures; specifying that the state administrative procedures act shall be applicable; relating to the

disposition of inventory in the event of the revocation or surrender of a retail license; providing that state agencies shall assist terminated employees; providing criminal offenses and penalties; providing rules of construction and a severability clause; relating to the sales tax on sales of liquor to retail licensees; and relating to the drunk driving prevention fund.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9a. Exemptions; exceptions for sales of liquors and wines to private clubs.

1 The exemptions provided in this article for sales of
2 tangible personal property and services rendered for
3 use or consumption in connection with the conduct of
4 the business of selling tangible personal property to
5 consumers or dispensing a service subject to the tax
6 under this article and, for sales of tangible personal
7 property for the purpose of resale in the form of
8 tangible personal property, shall not apply to persons
9 or organizations licensed under authority of article
10 seven, chapter sixty of this code, for the purchase of
11 liquor or wines for resale from either the alcohol
12 beverage control commissioner or from retail liquor
13 licensees licensed under authority of article three-a,
14 chapter sixty of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-1. Short title.

1 This article shall be known and may be cited as the
2 "State Retail Liquor License Act".

§60-3A-2. Legislative findings and declarations; legislative purpose.

1 (a) The Legislature hereby finds and declares that
2 the sale of liquor at retail should no longer be by the
3 state, but rather by retail licensees; that there is a
4 need for the state to control the wholesale sales of
5 liquor; that the health and welfare of the citizens of
6 this state will be adequately protected by the licensing
7 and control of such retail licensees; that the sale of
8 liquor through retail licensees will satisfy reasonable
9 consumer concerns of availability and price; and that
10 the operation and efficiency of state government will
11 be improved by removing the state from the retail sale
12 of liquor and permitting sales of liquor by retail
13 licensees under licenses issued by the state together
14 with strict enforcement of laws and rules relating to
15 the sale of liquor.

16 (b) It is the purpose of the Legislature in providing
17 for the retail sale of liquor to:

18 (1) Continue revenue to the state from the wholesale
19 sale of liquor, by requiring all retail licensees to
20 purchase all liquor (other than wine) from the com-
21 missioner and by further requiring all private clubs
22 licensed under the provisions of article seven of this
23 chapter to purchase all liquor (other than wine) from
24 retail licensees;

25 (2) Provide a system of controls, through limitations
26 on the numbers of retail outlets and application of the
27 police power of the state, to discourage the intemper-
28 ate use of liquor;

29 (3) Preserve and continue the tax base of counties
30 and municipalities derived from the retail sale of
31 liquor; and

32 (4) Obtain for the state financial gain from the
33 issuance of retail licenses.

**§60-3A-3. Sale of liquor by retail licensees permitted;
cessation of retail sale of liquor by state.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the sale of liquor by retail licensees in
3 accordance with the provisions of this article shall be
4 lawful.

5 (b) Upon the opening of a retail outlet in any market
6 zone, the state shall, as soon as practicable, discontinue
7 operating any and all state liquor stores and agency
8 stores within such market zone so long as a retail
9 outlet is in operation in such market zone.

§60-3A-4. Definitions.

1 For the purpose of this article:

2 “Applicant” means any person who bids for a retail
3 license, or who seeks the commissioner’s approval to
4 purchase or otherwise acquire a retail license from a
5 retail licensee, in accordance with the provisions of
6 this article;

7 “Application” means the form prescribed by the
8 commissioner which must be filed with the commis-
9 sioner by any person bidding for a retail license;

10 “Board” means the retail liquor licensing board
11 created by this article;

12 “Class A retail license” means a retail license
13 permitting the retail sale of liquor at more than one
14 retail outlet;

15 “Class B retail license” means a retail license
16 permitting the sale of liquor at only one retail outlet;

17 “Code” means the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended;

19 “Designated areas” means one or more geographic
20 areas within a market zone designated as such by the
21 board;

22 “Executive officer” means the president of an
23 applicant or retail licensee, any vice president of an
24 applicant or retail licensee in charge of a principal

25 business unit or division, or any other officer of an
26 applicant or retail licensee who performs a policy
27 making function;

28 "Liquor" means alcoholic liquor as defined in
29 section five, article one of this chapter, and shall also
30 include both wine and fortified wines as those terms
31 are defined in section two, article eight of this chapter;

32 "Market zone" means a geographic area designated
33 as such by the board for the purpose of issuing retail
34 licenses;

35 "Retail license" means a license issued under the
36 provisions of this article permitting the sale of liquor
37 at retail;

38 "Retail licensee" means the holder of a retail
39 license; and

40 "Retail outlet" means a specific location where
41 liquor may be lawfully sold by a retail licensee under
42 the provisions of this article.

**§60-3A-5. Creation of retail liquor licensing board;
members, terms, meetings and officers; general provisions.**

1 (a) There is hereby created the state retail liquor
2 licensing board which shall be composed of five
3 members, three of whom shall be appointed by the
4 governor by and with the advice and consent of the
5 Senate, one of whom shall be the secretary of tax and
6 revenue, and one of whom shall be the commissioner.
7 The secretary of tax and revenue and the commis-
8 sioner shall serve as the chairman and secretary,
9 respectively, of the board. No more than two of the
10 three members appointed by the governor shall be of
11 the same political party. No member of the board may
12 hold a retail license or have any financial interest,
13 directly or indirectly, in any retail licensee.

14 (b) The provisions of this subsection apply to the
15 three members appointed by the governor. They shall
16 be appointed for overlapping terms of three years each
17 and until their respective successors have been

18 appointed and have qualified, except for the original
19 appointments. For the purpose of original appoint-
20 ments, one member shall be appointed for a term of
21 three years and until his or her successor has been
22 appointed and has qualified, one member shall be
23 appointed for a term of two years and until his or her
24 successor has been appointed and has qualified, and
25 one member shall be appointed for a term of one year
26 and until his or her successor has been appointed and
27 has qualified. Members may be reappointed for any
28 number of terms. Before entering upon the perfor-
29 mance of his or her duties, each member shall take
30 and subscribe to the oath required by section five,
31 article four of the constitution of this state. Vacancies
32 shall be filled by appointment by the governor for the
33 unexpired term of the member whose office shall be
34 vacant and such appointment shall be made within
35 sixty days of the occurrence of such vacancy. Any
36 member may be removed by the governor in case of
37 incompetency, neglect of duty, gross immorality or
38 malfeasance in office. Members shall receive compen-
39 sation of one hundred dollars per day for each day
40 actually engaged in the performance of their duties as
41 board members, and in addition shall be reimbursed
42 for all reasonable and necessary expenses actually
43 incurred in the performance of their duties.

44 (c) A majority of the members of the board consti-
45 tutes a quorum and meetings shall be held at the call
46 of the chairman.

47 (d) Staff, office facilities and costs of operation of the
48 board shall be provided by the commissioner.

**§60-3A-6. General powers and duties of board and
commissioner.**

1 (a) The board shall create, based on economic and
2 demographic factors, market zones within the state for
3 the issuance of Class A and Class B retail licenses, and,
4 if deemed necessary or desirable by the board, to
5 create one or more designated areas within such
6 market zones for the issuance of Class B retail licenses.

7 (b) The commissioner shall:

8 (1) Prescribe application forms for persons desiring
9 to acquire retail licenses and adopt an orderly proce-
10 dure and timetable for investigating, processing and
11 approving applications;

12 (2) Develop a form of retail license to be issued to
13 each retail licensee under the provisions of this article;

14 (3) Disseminate to the public information relating to
15 the issuance of retail licenses;

16 (4) Promulgate standards for advertising the sale,
17 availability, price and selection of liquor;

18 (5) Enforce the provisions of this article;

19 (6) Impose civil penalties upon retail licensees;

20 (7) Enter the retail outlet of any retail licensee at
21 reasonable times for the purpose of inspecting the
22 same, and determining the compliance of such retail
23 licensee with the provisions of this article and any
24 rules promulgated by the board or the commissioner
25 pursuant to the provisions of this article; and

26 (8) Issue subpoenas and subpoenas duces tecum for
27 the purpose of conducting hearings under the provi-
28 sions of section ~~twenty-five~~ ^{twenty-six, PH} or section ~~twenty-seven~~ ^{eight, PH} of
29 this article, which subpoenas and subpoenas duces
30 tecum shall be issued in the time, for the fees, and
31 shall be enforced in the manner specified in section
32 one, article five, chapter twenty-nine-a of this code
33 with like effect as if such section one was set forth in
34 extenso herein.

35 (c) The board and the commissioner shall each:

36 (1) Engage accounting, legal and other necessary
37 professional consultants to assist them in carrying out
38 their respective duties under this article; and

39 (2) Adopt, amend, or repeal such procedural, inter-
40 pretive and legislative rules, consistent with the policy
41 and objectives of this article, as they may deem
42 necessary or desirable for the public interest in
43 carrying out the provisions of this article. Such rules
44 shall be adopted, amended and repealed in accordance

45 with the provisions of chapter twenty-nine-a of this
46 code.

§60-3A-7. Market zones; Class A and Class B retail licenses.

1 (a) The board shall determine the number of and
2 establish market zones for the retail sale of liquor
3 within this state. For each market zone so established,
4 the commissioner shall be authorized to issue one
5 Class A retail license and one or more Class B retail
6 licenses. Each Class A retail license shall permit the
7 holder thereof to operate such number of retail outlets
8 as the board shall have authorized for that market
9 zone. The number of Class B retail licenses to be
10 issued by the commissioner within each market zone
11 shall not exceed fifty percent of the number of retail
12 outlets authorized for the Class A retail license for
13 such market zone: *Provided*, That in a market zone
14 where the number of retail outlets authorized under
15 the Class A retail license is an odd number, the
16 number of Class B retail licenses which may be issued
17 in such market zone shall be rounded up to the next
18 highest whole number following that number which is
19 equal to fifty percent of the number of retail outlets
20 authorized under such Class A retail license.

21 (b) If the board determines that a market zone is not
22 suited for the issuance of a Class A retail license, then
23 only Class B retail licenses may be authorized for such
24 market zone and the board shall determine the
25 maximum number of Class B retail licenses which
26 may be issued for such market zone.

27 (c) When authorizing Class B retail licenses for a
28 market zone, the board may create one or more
29 designated areas within such market zone and autho-
30 rize one Class B retail license for each such designated
31 area. For each such market zone, the commissioner
32 may issue additional Class B retail licenses for retail
33 outlets to be located outside any such designated area,
34 but the number of such additional Class B retail
35 licenses, when added to the total number of Class B
36 retail licenses issued for all designated areas within
37 the market zone, shall not exceed the maximum

38 number of Class B retail licenses permitted under
39 subsection (a) of this section for that market zone.

40 (d) A person may hold one or more Class A retail
41 licenses and one or more Class B retail licenses, but
42 for the same market zone no person shall hold a Class
43 A retail license and a Class B retail license or more
44 than one Class B retail license.

**§60-3A-8. Retail license application requirements; retail
licensee qualifications.**

1 (a) Prior to or simultaneously with the submission of
2 a bid for a retail license, each applicant shall file an
3 application with the commissioner, stating under oath
4 the following:

5 (1) If the applicant is an individual, his or her name
6 and residence address;

7 (2) If the applicant is a corporation, limited partner-
8 ship, partnership or association, the name and business
9 address of such applicant; the state of its incorporation
10 or organization; the names and residence addresses of
11 each executive officer and director or general partner
12 of such entity; and the names and residence addresses
13 of any person owning, directly or indirectly, at least
14 twenty percent of the outstanding stock of or partner-
15 ship interests in such applicant; and

16 (3) That the applicant has never been convicted in
17 this state of any felony or other crime involving moral
18 turpitude or convicted of any felony in this or any
19 other state court or any federal court for a violation of
20 any state or federal liquor law, and if the applicant is
21 a corporation, limited partnership, partnership or
22 association, that none of its executive officers, direc-
23 tors or general partners, or any person owning,
24 directly or indirectly, at least twenty percent of the
25 outstanding stock of or partnership interests in such
26 applicant, has been so convicted.

27 (b) An applicant shall provide the commissioner any
28 such additional information as the commissioner may
29 request.

30 (c) Whenever a change occurs in any information
31 provided to the commissioner, such change shall
32 immediately be reported to the commissioner in the
33 same manner as originally provided.

34 (d) The commissioner shall disqualify each bid
35 submitted by an applicant under section ten of this
36 article, and no applicant shall be issued or eligible to
37 hold a retail license under this article, if:

38 (1) The applicant has been convicted in this state of
39 any felony or other crime involving moral turpitude
40 or convicted of any felony in this or any other state
41 court or any federal court for a violation of any state
42 or federal liquor law; or

43 (2) Any executive officer, director or general partner
44 of the applicant, or any person owning, directly or
45 indirectly, at least twenty percent of the outstanding
46 stock of or partnership interests in the applicant, has
47 been convicted in this state of any felony or other
48 crime involving moral turpitude or convicted of any
49 felony in this or any other state court or any federal
50 court for a violation of any state or federal liquor law.

**§60-3A-9. Investigation of applicants for retail license;
notification to applicants approving or deny-
ing application; general provisions relating to
licensing.**

1 (a) Upon receipt of an application for a retail license
2 and such supplemental information as the commis-
3 sioner may require, the commissioner may conduct
4 such investigation of an applicant as deemed necessary
5 or desirable.

6 (b) Upon the completion of any investigation of an
7 applicant, the commissioner shall inform such appli-
8 cant in writing whether the application has been
9 approved or denied, and shall post a copy of the
10 decision in the commissioner's office.

11 (c) When an application is denied, the commissioner
12 shall provide the applicant the reasons for the denial,
13 including specific findings of fact, and the applicant
14 shall be entitled to a hearing before the commissioner

15 if a hearing is requested within five days of the
16 decision. Any such hearing shall be held as specified in
17 section twenty-seven ^{eight or} of this article, but the decision
18 after hearing shall, notwithstanding the provisions of
19 section twenty-seven ^{eight or}, be final and binding and not
20 subject to judicial review.

21 (d) An applicant shall provide all information
22 required by this article and satisfy all requests for
23 information pertaining to qualification and in the form
24 specified by the commissioner. By filing an applica-
25 tion, an applicant shall waive liability for any damages
26 resulting from any disclosure or publication in any
27 manner of any material or information acquired
28 during inquiries, investigations or hearings.

§60-3A-10. Bidding procedure.

1 (a) The issuance of retail licenses shall be based on
2 sealed competitive bids in accordance with the provi-
3 sions of this section. Bids for the issuance of retail
4 licenses shall be obtained by public notice published as
5 a Class II-O legal advertisement in compliance with
6 the provisions of article three, chapter fifty-nine of
7 this code, and the publication area for such publication
8 shall be each market zone within which a retail outlet
9 shall be located. The second publication of such notice
10 must appear more than ninety days next preceding
11 the final day for submitting bids.

12 (b) Each bid shall indicate the market zone for
13 which the retail license is sought, whether the bid is
14 for a Class A retail license or Class B retail license,
15 and, if the board has created one or more designated
16 areas for such market zone, whether the bid is for the
17 Class B retail license to be issued for any such
18 designated area. No bid shall be altered or withdrawn
19 after the appointed hour for the opening of the bids.
20 Each retail license shall be awarded to the highest
21 bidder. In market zones where two or more Class B
22 retail licenses are authorized (other than for a desig-
23 nated area or areas), such licenses shall be awarded to
24 those persons submitting the highest bids. No bid shall
25 be considered unless the bond required under section

26 eleven of this article is submitted to the commissioner.
 27 All bids for a retail license may be rejected by the
 28 board if the board determines that the highest bid is
 29 inadequate, in which event the commissioner shall
 30 begin anew the bidding process for that retail license.

31 (c) Each person desiring to submit a bid must file
 32 the same with the commissioner prior to the specified
 33 date and hour for the bid openings. The failure to
 34 deliver or the nonreceipt of a bid prior to the
 35 appointed date and hour shall constitute sufficient
 36 reason for the rejection of a bid. After the award of
 37 the retail license, the commissioner shall indicate upon
 38 the successful bid that it was the successful bid.
 39 Thereafter, a copy of the bid and the bidder's applica-
 40 tion shall be maintained as a public record, shall be
 41 open to public inspection in the commissioner's office
 42 and shall not be destroyed without the written consent
 43 of the legislative auditor.

44 (d) Prior to the advertisement for bids for a retail
 45 license, the commissioner shall determine whether the
 46 current lessor for any existing state liquor store or
 47 stores within the applicable market zone or designated
 48 area will agree to accept the eventual Class B retail
 49 licensee as lessee for the remaining term of the lease.
 50 Should such lessor agree to accept the eventual Class
 51 B retail licensee, such retail licensee shall have the
 52 option to assume such lease. In market zones where
 53 there are two or more Class B retail licensees, the
 54 retail licensee who or which submitted the highest bid
 55 shall have the option to assume such lease and, if such
 56 retail licensee does not assume such lease, then the
 57 retail licensee who or which submitted the next
 58 highest bid for a retail license in such market zone
 59 shall have the option to assume such lease.

60 (e) Prior to the issuance of the retail license to the
 61 successful bidder, the bid price and the annual retail
 62 license fee, as specified in section twelve of this article,
 63 shall be paid to the commissioner by money order,
 64 certified check or cashier's check. All retail licenses
 65 shall be signed by the commissioner in the name of
 66 the state.

67 (f) If the successful bidder fails to pay to the
68 commissioner the bid price and the annual retail
69 license fee, at the time specified by the commissioner,
70 the bond provided for in section eleven of this article
71 shall be forfeited and such bidder shall not be issued
72 the retail license. The commissioner shall then issue
73 the retail license to the next highest bidder for such
74 retail license or reject all bids and start anew the
75 bidding procedure for such retail license.

§60-3A-10a. Preference for resident bidders.

1 In determining the highest bidder for purposes of
2 section ten of this article, the board shall afford a five
3 percent preference for West Virginia resident bidders,
4 which preference shall be computed by adding five
5 percent of the bid price to the bid price submitted by
6 each resident bidder. For purposes of this section a
7 bidder shall be deemed to be a West Virginia resident
8 if the bidder (1) has resided in this state for at least
9 four years immediately prior to the date on which the
10 bid is opened; or, if the bidder is a corporation, has had
11 its headquarters or principal place of business in this
12 state for at least four years immediately prior to such
13 date and (2) meets the requirements set forth in
14 section forty-four, article three, chapter five-a of this
15 code relating to a residency of vendors, except for the
16 requirement of having paid business and occupation
17 taxes.

§60-3A-11. Bonding requirements.

1 Each applicant submitting a bid under section ten of
2 this article shall furnish to the commissioner a bond at
3 the time of bidding, which bond shall guarantee the
4 payment of twenty-five percent of the price bid for the
5 retail license. The bond required by this section shall
6 be furnished in cash or negotiable securities or shall
7 be a surety bond issued by a surety company autho-
8 rized to do business with the state or an irrevocable
9 letter of credit issued by a financial institution accept-
10 able to the commissioner. If furnished in cash or
11 negotiable securities, the principal shall be deposited
12 without restriction in the state treasurer's office and

13 credited to the commissioner, but any income shall
14 inure to the benefit of the applicant. The bond shall be
15 returned to an applicant following the bidding if such
16 applicant is not the successful bidder for the retail
17 license, and, if an applicant is the successful bidder,
18 the bond shall be released after issuance of the retail
19 license.

**§60-3A-12. Annual retail license fee; expiration and renewal
of retail licenses.**

1 (a) The annual retail license period shall be from the
2 first day of July to the thirtieth day of June of the
3 following year. The annual retail license fee for a
4 Class A retail license shall be the sum obtained by
5 multiplying the number of retail outlets operated by
6 the retail licensee in the market zone to which such
7 Class A retail license applies by one thousand five
8 hundred dollars. The annual retail license fee for a
9 Class B retail license shall be five hundred dollars.
10 The annual retail license fee for the initial year of
11 issuance shall be prorated based on the number of
12 days remaining between the date of issuance and the
13 following June thirtieth.

14 (b) All retail licenses shall expire on the thirtieth
15 day of June of each year and may be renewed only
16 upon the submission to the commissioner of the same
17 information required for the issuance of the license
18 and such additional information as may be requested
19 by the commissioner on such forms and by such date
20 as may be prescribed by the commissioner, together
21 with the payment to the commissioner of the applica-
22 ble annual retail license fee required under this
23 section.

24 (c) No person may sell liquor at any retail outlet if
25 the retail license applicable to such outlet has been
26 suspended or revoked, or has expired.

27 (d) All retail licenses issued or renewed under the
28 provisions of this article shall expire and be of no
29 further force or effect as of the first day of July, in the
30 year two thousand, prior to which time new retail
31 licenses shall be issued by following the bidding and

32 other procedures set forth herein for the initial
33 issuance of retail licenses.

§60-3A-13. Annual reports.

1 On or before the thirty-first day of December, one
2 thousand nine hundred ninety, and each successive
3 year thereafter, the commissioner shall submit to the
4 joint committee on government and finance an annual
5 report focused upon subjects of interest concerning
6 retail alcohol sales and of the implementation of this
7 article including, but not limited to, the total revenue
8 earned by the issuance of retail licenses, the location
9 of each retail outlet and the names of all applicants for
10 retail franchises.

§60-3A-14. Sale, assignment or transfer of retail license.

1 (a) No person may purchase or otherwise acquire a
2 retail license unless the commissioner has first
3 approved of such person's qualifications to hold a
4 retail license, which qualifications shall be the same as
5 those required under section eight of this article.

6 (b) No person may sell, assign or otherwise transfer
7 a retail license without the prior written approval of
8 the commissioner. For purposes of this section, the
9 merger of a retail licensee or the sale of more than
10 fifty percent of the outstanding stock of or partnership
11 interests in the retail licensee shall be deemed to be a
12 sale, assignment or transfer of a retail license under
13 this section.

§60-3A-15. Surrender of retail license.

1 Any retail licensee may surrender a retail license to
2 the commissioner at any time. The commissioner shall
3 then proceed to reissue the retail license by following
4 the bidding and other procedures set forth herein for
5 the initial issuance of a retail license.

§60-3A-16. Restriction on location of retail outlets.

1 No retail outlet may be located within the immedi-
2 ate vicinity of a school or church: *Provided*, That the
3 provisions of this section shall not apply to the location
4 of a retail licensee who, on the date of the passage of

5 this act, holds a license for the retail sale of wine,
6 fortified wine or nonintoxicating beer at such location.

§60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment.

1 (a) The commissioner shall fix wholesale prices for
2 the sale of liquor (other than wine) to retail licensees.
3 The commissioner shall sell liquor (other than wine)
4 to retail licensees according to a uniform pricing
5 schedule: *Provided*, That the commissioner may also
6 establish discount prices for the sale to retail licensees
7 of liquor in inventory at state liquor stores and agency
8 stores, but such discount prices shall only be available
9 to retail licensees who accept delivery of such liquor at
10 such stores. The commissioner shall obtain if possible,
11 upon request, any liquor requested by a retail licensee.

12 (b) In establishing wholesale prices, the commis-
13 sioner shall include all price increases heretofore
14 mandated under article three of this chapter.

15 (c) On or before the first day of July, one thousand
16 nine hundred ninety, the commissioner shall specify
17 the maximum wholesale markup percentage which
18 may be applied to the prices paid by the commissioner
19 for all liquor (other than wine) in order to determine
20 the prices at which all liquor (other than wine) will be
21 sold to retail licensees during the succeeding three
22 years.

23 (d) A retail licensee shall purchase all liquor (other
24 than wine) for resale in this state only from the
25 commissioner, and the provisions of sections twelve
26 and thirteen, article six of this chapter, shall not apply
27 to the transportation of such liquor: *Provided*, That a
28 retail licensee shall purchase wine from a distributor
29 thereof who is duly licensed under article eight of this
30 chapter. All liquor (other than wine) purchased by
31 retail licensees shall be stored in the state at the retail
32 outlet or outlets operated by the retail licensee.

33 (e) The sale of liquor by the commissioner to retail

34 licensees shall be by money order, certified check or
35 cashier's check only: *Provided*, That if a retail licensee
36 posts with the commissioner an irrevocable letter of
37 credit from a financial institution acceptable to the
38 commissioner guaranteeing payment of checks, then
39 the commissioner may accept the retail licensee's
40 checks in an amount up to the amount of the letter of
41 credit.

§60-3A-18. Days and hours retail licensees may sell liquor.

1 Retail licensees may not sell liquor on Sundays,
2 Christmas or election day, or between the hours of ten
3 o'clock p.m. and eight o'clock a.m., except that wine
4 and fortified wines may be sold on such days and at
5 such times as authorized in section thirty-four, article
6 eight of this chapter.

§60-3A-19. Limitation on amount to be sold.

1 Not more than ten gallons of liquor may be sold by
2 a retail licensee to a person at one time without the
3 approval of the commissioner or his or her represen-
4 tative, but a sale in excess of ten gallons may be made
5 to a religious organization purchasing wine for sacra-
6 mental purposes: *Provided*, That this section does not
7 apply to purchases by private clubs as defined in
8 article seven of this chapter.

§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.

1 This article does not apply to retail sales of nonintox-
2 icating beer and a retail licensee may sell nonintoxi-
3 cating beer for consumption off the premises of any
4 retail outlet operated by such retail licensee if such
5 retail licensee has obtained the appropriate license to
6 sell the same under article sixteen, chapter eleven of
7 this code.

§60-3A-21. Tax on purchases of liquor.

1 (a) For the purpose of providing financial assistance
2 to and for the use and benefit of the various counties
3 and municipalities of this state, there is hereby levied
4 tax upon all purchases of liquor from retail licensees.

5 The tax shall be five percent of the purchase price and
6 shall be added to and collected with the purchase price
7 by the retail licensee.

8 (b) All such tax collected within the corporate limits
9 of a municipality in this state shall be remitted to such
10 municipality; all such tax collected outside of but
11 within one mile of the corporate limits of any munic-
12 ipality shall be remitted to such municipality; and all
13 other tax so collected shall be remitted to the county
14 wherein collected: *Provided*, That where the corporate
15 limits of more than one municipality be within one
16 mile of the place of collection of such tax, all such tax
17 collected shall be divided equally among each of such
18 municipalities: *Provided, however*, That such mile is
19 measured by the most direct hard surface road or
20 access way usually and customarily used as ingress
21 and egress to the place of tax collection.

22 (c) The tax commissioner, by appropriate rule
23 promulgated pursuant to chapter twenty-nine-a of this
24 code, shall provide for the collection of such tax upon
25 all purchases from retail licensees, separation or
26 proration of the same and distribution thereof to the
27 respective counties and municipalities for which the
28 same shall be collected. Such rule shall provide that all
29 such taxes shall be deposited with the state treasurer
30 and distributed quarterly by the state treasurer upon
31 warrants of the auditor payable to the counties and
32 municipalities.

§60-3A-22. Requirement for posting informational sign.

1 Each retail licensee shall post in an open and
2 prominent place within each retail outlet operated by
3 such person a blood-alcohol chart in the form pres-
4 cribed by section twenty-four, article six of this
5 chapter.

§60-3A-23. Records required of retail licensees; inspection of records.

1 The commissioner shall by rule prescribe the
2 records to be kept by retail licensees relating to the
3 purchase and sale of liquor. Such records shall be open

4 at all reasonable times to inspection by the
5 commissioner.

§60-3A-24. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years
2 who, for the purpose of purchasing liquor from a retail
3 licensee, misrepresents his or her age, or who for such
4 purpose presents or offers any written evidence of age
5 which is false, fraudulent or not actually his or her
6 own, or who illegally attempts to purchase liquor from
7 a retail licensee, is guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined in an amount not to
9 exceed fifty dollars or imprisoned in the county jail for
10 a period not to exceed seventy-two hours, or both
11 fined and imprisoned, 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 knowingly buys for, gives to or
15 furnishes to anyone under the age of twenty-one to
16 whom he or she is not related by blood or marriage
17 any liquor from whatever source, is guilty of a
18 misdemeanor and shall, upon conviction thereof, be
19 fined in an amount not to exceed one hundred dollars
20 or imprisoned in the county jail for a period not to
21 exceed ten days, or both fined and imprisoned.

22 (c) No person while on the premises of a retail outlet
23 may consume liquor or break the seal on any package
24 or bottle of liquor. Any person who violates the
25 provisions of this subsection (c) is guilty of a misde-
26 meanor and shall, upon conviction thereof, be fined in
27 an amount not to exceed one hundred dollars or
28 imprisoned in the county jail for a period not to
29 exceed ten days, or both fined and imprisoned.

**§60-3A-25. Certain acts of retail licensees prohibited;
criminal penalties.**

1 (a) It is unlawful for any retail licensee, or agent or
2 employee thereof, on such retail licensee's premises to:

3 (1) Sell or offer for sale any liquor other than from
4 the original package or container;

5 (2) Sell, give away, or permit the sale of, gift of, or
6 the procurement of, any liquor, for or to any person
7 under twenty-one years of age;

8 (3) Sell, give away, or permit the sale of, gift of, or
9 the procurement of, any liquor, for or to any person
10 visibly intoxicated;

11 (4) Sell or offer for sale any liquor on any Sunday
12 or other than during the hours permitted for the sale
13 of liquor by retail licensees as provided under this
14 article;

15 (5) Permit the consumption by any person of any
16 liquor;

17 (6) With the intent to defraud, alter, change or
18 misrepresent the quality, quantity or brand name of
19 any liquor;

20 (7) Permit any person under eighteen years of age to
21 sell, furnish or give liquor to any other person;

22 (8) Purchase or otherwise obtain liquor in any
23 manner or from any source other than that specifi-
24 cally authorized in this article; or

25 (9) Permit any person to break the seal on any
26 package or bottle of liquor.

27 (b) Any person who violates any provision of this
28 article, except section twenty-three of this article,
29 including, but not limited to, any provision of this
30 section, or any rule promulgated by the board or the
31 commissioner, or who makes any false statement
32 concerning any material fact, or who omits any
33 material fact with intent to deceive, in submitting an
34 application for a retail license or for a renewal of a
35 retail license or in any hearing concerning the suspen-
36 sion or revocation thereof, or who commits any of the
37 acts declared in this article to be unlawful, is guilty of
38 a misdemeanor, and shall, upon conviction thereof, for
39 each offense be fined not less than one hundred or
40 more than five thousand dollars, or imprisoned in the
41 county jail for not less than thirty days nor more than
42 one year, or both fined and imprisoned. Magistrates

43 have concurrent jurisdiction with the circuit courts for
44 offenses under this article.

45 (c) Nothing in this article, or any rule of the board
46 or commissioner, prevents or prohibits any retail
47 licensee from employing any person who is at least
48 eighteen years of age to serve in any retail licensee's
49 lawful employment at any retail outlet operated by
50 such retail licensee, or from having such person sell or
51 deliver liquor under the provisions of this article. With
52 the prior approval of the commissioner, a retail
53 licensee may employ persons at any retail outlet
54 operated by such retail licensee who are less than
55 eighteen years of age but at least sixteen years of age,
56 but such persons' duties shall not include the sale or
57 delivery of liquor: *Provided*, That the authorization to
58 employ such persons under the age of eighteen years
59 shall be clearly indicated on the retail license issued to
60 any such retail licensee.

§60-3A-26. Civil penalties.

1 (a) Any retail licensee who violates any provision of
2 this article or any rule promulgated by the board or
3 commissioner, may be assessed a civil penalty by the
4 commissioner, which penalty shall not be more than
5 one thousand dollars for each such violation. Each
6 violation shall constitute a separate offense. In deter-
7 mining the amount of the penalty, the commissioner
8 shall consider the retail licensee's history of previous
9 violations, the appropriateness of such penalty to the
10 size of the business of the retail licensee charged, the
11 gravity of the violation and the demonstrated good
12 faith of the retail licensee charged in attempting to
13 achieve rapid compliance after notification of a
14 violation.

15 (b) A civil penalty shall be assessed by the commis-
16 sioner only after the commissioner shall have given at
17 least ten days' notice to the retail licensee. Notice shall
18 be in writing, shall state the reason for the proposed
19 civil penalty and the amount thereof, and shall
20 designate a time and place for a hearing where the
21 retail licensee may show cause why the civil penalty

22 should not be imposed. Notice shall be sent by certified
23 mail to the address for which the retail license was
24 issued. The retail licensee may, at the time designated
25 for the hearing, produce evidence in his or her behalf
26 and be represented by counsel.

27 (c) The provisions of subsections (b), (c), (d) and (e)
28 of section ~~twenty-seven~~^{eighty-four} of this article are applicable to
29 any such hearing and with respect to judicial review
30 thereafter.

§60-3A-27. Suspension or revocation of retail license.

1 (a) The commissioner may, upon his or her own
2 motion, or upon the sworn complaint of any person,
3 conduct an investigation to determine if any provision
4 of this article or of any rule promulgated by the board
5 or commissioner under authority of this article has
6 been violated by any retail licensee. The commissioner
7 may suspend or revoke a retail license if the retail
8 licensee or any employee thereof acting in the scope of
9 his or her employment has violated any such provi-
10 sion, and may suspend a retail license without hearing
11 for a period not to exceed twenty days if he or she
12 finds probable cause to believe that the retail licensee
13 or any employee thereof acting in the scope of his or
14 her employment has willfully violated any such
15 provision.

16 (b) The commissioner may revoke a retail license for
17 any reason which would constitute grounds for the
18 denial of an application filed pursuant to section eight
19 of this article.

§60-3A-28. Notice of and hearing on revocation.

1 (a) Before a retail license issued under the authority
2 of this article may be suspended for a period of more
3 than twenty days, or revoked, the commissioner shall
4 give at least ten days' notice to the retail licensee.
5 Notice shall be in writing, shall state the reason for
6 suspension or revocation, and shall designate a time
7 and place for a hearing where the retail licensee may
8 show cause why the retail license should not be
9 suspended or revoked. Notice shall be sent by certified

10 mail to the address for which the retail license was
11 issued. The retail licensee may, at the time designated
12 for the hearing, produce evidence in his or her behalf
13 and be represented by counsel.

14 (b) Such hearing and the administrative procedures
15 prior to, during and following the same shall be
16 governed by and in accordance with the provisions of
17 article five, chapter twenty-nine-a of this code in like
18 manner as if the provisions of article five were fully
19 set forth in this section.

20 (c) Any person adversely affected by an order
21 entered following such hearing shall have the right of
22 judicial review thereof in accordance with the provi-
23 sions of section four, article five, chapter twenty-nine-
24 a of this code with like effect as if the provisions of
25 said section four were fully set forth in this section.

26 (d) The judgment of a circuit court reviewing such
27 order of the commissioner shall be final unless rev-
28 ersed, vacated or modified on appeal to the supreme
29 court of appeals in accordance with the provisions of
30 section one, article six, chapter twenty-nine-a of this
31 code.

32 (e) Legal counsel and services for the commissioner
33 in all such proceedings in any circuit court and the
34 supreme court of appeals shall be provided by the
35 attorney general or his or her assistants and in any
36 proceedings in any circuit court by the prosecuting
37 attorney of that county as well, all without additional
38 compensation.

39 (f) Upon final revocation, the commissioner shall
40 proceed to reissue the retail license by following the
41 procedures set forth herein for the initial issuance of
42 a retail license.

**§60-3A-29. Disposition of inventory upon revocation or
surrender of retail license.**

1 In the event of the revocation or surrender of any
2 retail license in accordance with the provisions of this
3 article, the commissioner shall purchase, and the retail
4 licensee holding such retail license shall sell to the

5 commissioner, all of the liquor inventory of such retail
6 licensee based on the then current cost of such
7 inventory less any expenses incurred by the commis-
8 sioner in connection with the repossession thereof.

§60-3A-30. Employees.

1 The department of health and human resources, the
2 division of employment security, the public employees
3 retirement system, the public employees insurance
4 agency, any state agency or local community action
5 agency receiving job training partnership act funds,
6 and any other agency of the state involved with
7 benefits or services to the unemployed, shall work
8 individually with all employees whose jobs have been
9 terminated by this chapter in order to recommend
10 benefits, services, training, interagency employment
11 transfer, or other employment. The alcohol beverage
12 control commission director and directors of all other
13 state agencies shall use best efforts to employ qualified
14 employees who were employed at the facility immedi-
15 ately prior to such sale or transfer: *Provided, That*
16 notwithstanding any other provision of the code to the
17 contrary, in filling vacancies at other facilities or other
18 state agencies the director and the directors of other
19 agencies shall, for a period of twenty-four months
20 after such transfer or sale give preference over all but
21 existing employees to qualified employees who were
22 permanently employed at the facility immediately
23 prior to such transfer or sale: *Provided, however, That*
24 qualified persons who were permanently employed at
25 an alcohol beverage control commission facility imme-
26 diately prior to such transfer or sale shall not super-
27 sede those employees with recall rights in other state
28 agencies.

§60-3A-31. Rules of construction; severability.

1 (a) Nothing contained in this article shall be con-
2 strued to modify the provisions of article five of this
3 chapter relating to local option elections, except that
4 the references to sales of liquor by the commissioner
5 shall be deemed to refer to sales of liquor by retail
6 licensees.

7 (b) If any section, subsection, subdivision, provision,
8 clause or phrase of this article or the application
9 thereof to any person or circumstance is held uncon-
10 stitutional or invalid, such unconstitutionality or
11 invalidity shall not affect other sections, subsections,
12 subdivisions, provisions, clauses or phrases or applica-
13 tions of the article, and to this end each and every
14 section, subsection, subdivision, provision, clause and
15 phrase of this article is declared to be severable. The
16 Legislature hereby declares that it would have enacted
17 the remaining sections, subsections, provisions, clauses
18 and phrases of this article even if it had known that
19 any sections, subsections, subdivisions, provisions,
20 clauses and phrases thereof would be declared to be
21 unconstitutional or invalid, and that it would have
22 enacted this article even if it had known that the
23 application thereof to any person or circumstance
24 would be held to be unconstitutional or invalid.

25 (c) The provisions of subsection (b) of this section
26 shall be fully applicable to all future amendments or
27 additions to this article, with like effect as if the
28 provisions of said subsection (b) were set forth in
29 extenso in every such amendment or addition and
30 were reenacted as a part thereof.

31 (d) In the event of any conflict between any provi-
32 sion of this article and any other provision of this code,
33 any such other provision shall be construed and
34 applied so as to enable the board and commissioner to
35 implement and make effective the provisions of this
36 article.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

1 (a) All licensees shall purchase all alcoholic liquors
2 sold by them from the West Virginia alcohol beverage
3 control commissioner at prices established by such
4 commissioner for sales of such alcoholic liquors to the
5 public generally or from any retail licensee licensed
6 under the provisions of article three-a of this chapter,

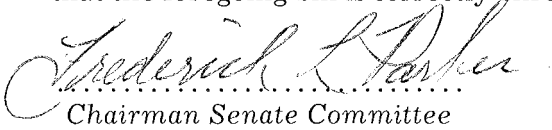
7 except that such licensees may purchase those wines
8 permitted to be sold at retail pursuant to article eight
9 of this chapter from those distributors licensed pursuant
10 to said article at the same prices such distributors
11 sell such wines to retailers licensed pursuant to said
12 article.

13 (b) In all reports filed under section sixteen, article
14 fifteen, chapter eleven of this code, retail licensees
15 licensed under the provisions of article three-a of this
16 chapter shall separately identify the amount of sales
17 tax on sales of liquor to licensees in such manner as
18 the tax commissioner shall require.

19 (c) Notwithstanding the provisions of section thirty,
20 article fifteen, chapter eleven of this code to the
21 contrary, the amount of such sales taxes collected by
22 the tax commissioner shall be deposited in a revolving
23 fund account in the state treasurer's office, designated
24 the "drunk driving prevention fund", and administered
25 by the commission on drunk driving prevention,
26 subject to appropriations by the Legislature.

Enr. Com. Sub. for S. B. No. 337] 28


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


.....
Chairman Senate Committee

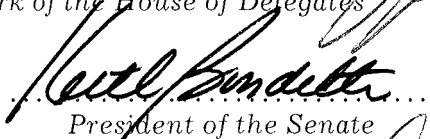

.....
Chairman House Committee

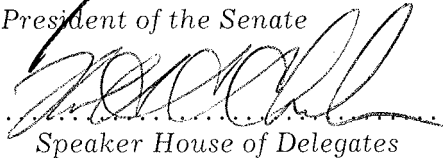
Originated in the Senate.

In effect from passage.

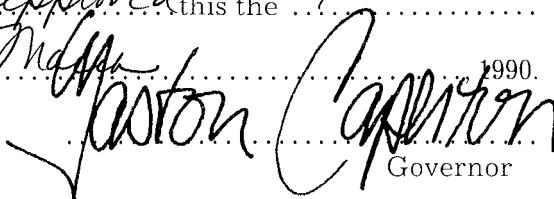

.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *7th*
day of *March* 1990.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/01/90

Time 11:01

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