WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 337

(By Senator Brandt, 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 tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to the tax under this article and, for sales of tangible personal property for the purpose of resale in the form of tangible personal property, shall not apply to persons or organizations licensed under authority of article seven, chapter sixty of this code, for the purchase of liquor or wines for resale from either the alcohol beverage control commissioner or from retail liquor licensees licensed under authority of article three-a, chapter sixty of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-1. Short title.
This article shall be known and may be cited as the “State Retail Liquor License Act”.

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

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

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

(1) Continue revenue to the state from the wholesale sale of liquor, by requiring all retail licensees to purchase all liquor (other than wine) from the commissioner and by further requiring all private clubs licensed under the provisions of article seven of this chapter to purchase all liquor (other than wine) from retail licensees;

(2) Provide a system of controls, through limitations on the numbers of retail outlets and application of the police power of the state, to discourage the intemperate use of liquor;

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

(4) Obtain for the state financial gain from the issuance of retail licenses.
§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.

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

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

§60-3A-4. Definitions.

For the purpose of this article:

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

“Application” means the form prescribed by the commissioner which must be filed with the commissioner by any person bidding for a retail license;

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

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

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

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

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

“Executive officer” means the president of an applicant or retail licensee, any vice president of an applicant or retail licensee in charge of a principal
business unit or division, or any other officer of an applicant or retail licensee who performs a policy making function;

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

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

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

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

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

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

(a) There is hereby created the state retail liquor licensing board which shall be composed of five members, three of whom shall be appointed by the governor by and with the advice and consent of the Senate, one of whom shall be the secretary of tax and revenue, and one of whom shall be the commissioner. The secretary of tax and revenue and the commissioner shall serve as the chairman and secretary, respectively, of the board. No more than two of the three members appointed by the governor shall be of the same political party. No member of the board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.

(b) The provisions of this subsection apply to the three members appointed by the governor. They shall be appointed for overlapping terms of three years each and until their respective successors have been
appointed and have qualified, except for the original appointments. For the purpose of original appointments, one member shall be appointed for a term of three years and until his or her successor has been appointed and has qualified, one member shall be appointed for a term of two years and until his or her successor has been appointed and has qualified, and one member shall be appointed for a term of one year and until his or her successor has been appointed and has qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article four of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall receive compensation of one hundred dollars per day for each day actually engaged in the performance of their duties as board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

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

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

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

(b) The commissioner shall:
(1) Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving applications;

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

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

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

(5) Enforce the provisions of this article;

(6) Impose civil penalties upon retail licensees;

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

(8) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty or section twenty-seven of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if such section one was set forth in extenso herein.

(c) The board and the commissioner shall each:

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

(2) Adopt, amend, or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance
with the provisions of chapter twenty-nine-a of this code.

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

(a) The board shall determine the number of and establish market zones for the retail sale of liquor within this state. For each market zone so established, the commissioner shall be authorized to issue one Class A retail license and one or more Class B retail licenses. Each Class A retail license shall permit the holder thereof to operate such number of retail outlets as the board shall have authorized for that market zone. The number of Class B retail licenses to be issued by the commissioner within each market zone shall not exceed fifty percent of the number of retail outlets authorized for the Class A retail license for such market zone: Provided, That in a market zone where the number of retail outlets authorized under the Class A retail license is an odd number, the number of Class B retail licenses which may be issued in such market zone shall be rounded up to the next highest whole number following that number which is equal to fifty percent of the number of retail outlets authorized under such Class A retail license.

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

(c) When authorizing Class B retail licenses for a market zone, the board may create one or more designated areas within such market zone and authorize one Class B retail license for each such designated area. For each such market zone, the commissioner may issue additional Class B retail licenses for retail outlets to be located outside any such designated area, but the number of such additional Class B retail licenses, when added to the total number of Class B retail licenses issued for all designated areas within the market zone, shall not exceed the maximum
number of Class B retail licenses permitted under subsection (a) of this section for that market zone.

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

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

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

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

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

(3) That the applicant has never been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law, and if the applicant is a corporation, limited partnership, partnership or association, that none of its executive officers, directors or general partners, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock of or partnership interests in such applicant, has been so convicted.

(b) An applicant shall provide the commissioner any such additional information as the commissioner may request.
Whenever a change occurs in any information provided to the commissioner, such change shall immediately be reported to the commissioner in the same manner as originally provided.

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

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

(2) Any executive officer, director or general partner of the applicant, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock of or partnership interests in the applicant, has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal 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 denying application; general provisions relating to licensing.

(a) Upon receipt of an application for a retail license and such supplemental information as the commissioner may require, the commissioner may conduct such investigation of an applicant as deemed necessary or desirable.

(b) Upon the completion of any investigation of an applicant, the commissioner shall inform such applicant in writing whether the application has been approved or denied, and shall post a copy of the decision in the commissioner’s office.

(c) When an application is denied, the commissioner shall provide the applicant the reasons for the denial, including specific findings of fact, and the applicant shall be entitled to a hearing before the commissioner.
if a hearing is requested within five days of the decision. Any such hearing shall be held as specified in section twenty-seven of this article, but the decision after hearing shall, notwithstanding the provisions of section twenty-seven, be final and binding and not subject to judicial review.

(d) An applicant shall provide all information required by this article and satisfy all requests for information pertaining to qualification and in the form specified by the commissioner. By filing an application, an applicant shall waive liability for any damages resulting from any disclosure or publication in any manner of any material or information acquired during inquiries, investigations or hearings.


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

(b) Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the board has created one or more designated areas for such market zone, whether the bid is for the Class B retail license to be issued for any such designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of the bids. Each retail license shall be awarded to the highest bidder. In market zones where two or more Class B retail licenses are authorized (other than for a designated area or areas), such licenses shall be awarded to those persons submitting the highest bids. No bid shall be considered unless the bond required under section
eleven of this article is submitted to the commissioner. All bids for a retail license may be rejected by the board if the board determines that the highest bid is inadequate, in which event the commissioner shall begin anew the bidding process for that retail license.

(c) Each person desiring to submit a bid must file the same with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour shall constitute sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder’s application shall be maintained as a public record, shall be open to public inspection in the commissioner’s office and shall not be destroyed without the written consent of the legislative auditor.

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

(e) Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier’s check. All retail licenses shall be signed by the commissioner in the name of the state.
(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee, at the time specified by the commissioner, the bond provided for in section eleven of this article shall be forfeited and such bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for such retail license or reject all bids and start anew the bidding procedure for such retail license.

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

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


Each applicant submitting a bid under section ten of this article shall furnish to the commissioner a bond at the time of bidding, which bond shall guarantee the payment of twenty-five percent of the price bid for the retail license. The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commissioner. If furnished in cash or negotiable securities, the principal shall be deposited without restriction in the state treasurer’s office and
credited to the commissioner, but any income shall
inure to the benefit of the applicant. The bond shall be
returned to an applicant following the bidding if such
applicant is not the successful bidder for the retail
license, and, if an applicant is the successful bidder,
the bond shall be released after issuance of the retail
license.

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

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

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

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

(d) All retail licenses issued or renewed under the
provisions of this article shall expire and be of no
further force or effect as of the first day of July, in the
year two thousand, prior to which time new retail
licenses shall be issued by following the bidding and
other procedures set forth herein for the initial issuance of retail licenses.


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

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

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

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


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

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

No retail outlet may be located within the immediate vicinity of a school or church: Provided, That the provisions of this section shall not apply to the location of a retail licensee who, on the date of the passage of
this act, holds a license for the retail sale of wine, 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.

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

(b) In establishing wholesale prices, the commissioner shall include all price increases heretofore mandated under article three of this chapter.

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

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

(e) The sale of liquor by the commissioner to retail
licensees shall be by money order, certified check or cashier's check only: Provided, That if a retail licensee posts with the commissioner an irrevocable letter of credit from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

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

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

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

Not more than ten gallons of liquor may be sold by a retail licensee to a person at one time without the approval of the commissioner or his or her representative, but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes: Provided, That this section does not apply to purchases by private clubs as defined in article seven of this chapter.

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

This article does not apply to retail sales of nonintoxicating beer and a retail licensee may sell nonintoxicating beer for consumption off the premises of any retail outlet operated by such retail licensee if such retail licensee has obtained the appropriate license to sell the same under article sixteen, chapter eleven of this code.

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

(a) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied tax upon all purchases of liquor from retail licensees.
The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the retail licensee.

(b) All such tax collected within the corporate limits of a municipality in this state shall be remitted to such municipality; all such tax collected outside of but within one mile of the corporate limits of any municipality shall be remitted to such municipality; and all other tax so collected shall be remitted to the county wherein collected: Provided, That where the corporate limits of more than one municipality be within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of such municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

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


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

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

1 The commissioner shall by rule prescribe the records to be kept by retail licensees relating to the purchase and sale of liquor. Such records shall be open
at all reasonable times to inspection by the commissioner.


(a) Any person under the age of twenty-one years who, for the purpose of purchasing liquor from a retail licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase liquor from a retail licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or imprisoned in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(b) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or imprisoned in the county jail for a period not to exceed ten days, or both fined and imprisoned.

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

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

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

(1) Sell or offer for sale any liquor other than from the original package or container;
(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under twenty-one years of age;

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

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

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

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

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

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

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

(b) Any person who violates any provision of this article, except section twenty-three of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred or more than five thousand dollars, or imprisoned in the county jail for not less than thirty days nor more than one year, or both fined and imprisoned. Magistrates
have concurrent jurisdiction with the circuit courts for offenses under this article.

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


(a) Any retail licensee who violates any provision of this article or any rule promulgated by the board or commissioner, may be assessed a civil penalty by the commissioner, which penalty shall not be more than one thousand dollars for each such violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the retail licensee's history of previous violations, the appropriateness of such penalty to the size of the business of the retail licensee charged, the gravity of the violation and the demonstrated good faith of the retail licensee charged in attempting to achieve rapid compliance after notification of a violation.

(b) A civil penalty shall be assessed by the commissioner only after the commissioner shall have given at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for the proposed civil penalty and the amount thereof, and shall designate a time and place for a hearing where the retail licensee may show cause why the civil penalty
§60-3A-27. Suspension or revocation of retail license.

(a) The commissioner may, upon his or her own motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of this article or of any rule promulgated by the board or commissioner under authority of this article has been violated by any retail licensee. The commissioner may suspend or revoke a retail license if the retail licensee or any employee thereof acting in the scope of his or her employment has violated any such provision, and may suspend a retail license without hearing for a period not to exceed twenty days if he or she finds probable cause to believe that the retail licensee or any employee thereof acting in the scope of his or her employment has willfully violated any such provision.

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


(a) Before a retail license issued under the authority of this article may be suspended for a period of more than twenty days, or revoked, the commissioner shall give at least ten days’ notice to the retail licensee. Notice shall be in writing, shall state the reason for suspension or revocation, and shall designate a time and place for a hearing where the retail licensee may show cause why the retail license should not be suspended or revoked. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(c) The provisions of subsections (b), (c), (d) and (e) of section twenty-seven of this article are applicable to any such hearing and with respect to judicial review thereafter.
mail to the address for which the retail license was
issued. The retail licensee may, at the time designated
for the hearing, produce evidence in his or her behalf
and be represented by counsel.

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

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

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

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

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

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

In the event of the revocation or surrender of any
retail license in accordance with the provisions of this
article, the commissioner shall purchase, and the retail
licensee holding such retail license shall sell to the
§60-3A-30. Employees.

The department of health and human resources, the division of employment security, the public employees retirement system, the public employees insurance agency, any state agency or local community action agency receiving job training partnership act funds, and any other agency of the state involved with benefits or services to the unemployed, shall work individually with all employees whose jobs have been terminated by this chapter in order to recommend benefits, services, training, interagency employment transfer, or other employment. The alcohol beverage control commission director and directors of all other state agencies shall use best efforts to employ qualified employees who were employed at the facility immediately prior to such sale or transfer: Provided, That notwithstanding any other provision of the code to the contrary, in filling vacancies at other facilities or other state agencies the director and the directors of other agencies shall, for a period of twenty-four months after such transfer or sale give preference over all but existing employees to qualified employees who were permanently employed at the facility immediately prior to such transfer or sale: Provided, however, That qualified persons who were permanently employed at an alcohol beverage control commission facility immediately prior to such transfer or sale shall not supersede those employees with recall rights in other state agencies.


(a) Nothing contained in this article shall be construed to modify the provisions of article five of this chapter relating to local option elections, except that the references to sales of liquor by the commissioner shall be deemed to refer to sales of liquor by retail licensees.
(b) If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

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

(d) In the event of any conflict between any provision of this article and any other provision of this code, any such other provision shall be construed and applied so as to enable the board and commissioner to implement and make effective the provisions of this article.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

(a) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by such commissioner for sales of such alcoholic liquors to the public generally or from any retail licensee licensed under the provisions of article three-a of this chapter,
except that such licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices such distributors sell such wines to retailers licensed pursuant to said article.

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

(c) Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this code to the contrary, the amount of such sales taxes collected by the tax commissioner shall be deposited in a revolving fund account in the state treasurer’s office, designated the “drunk driving prevention fund”, and administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick C. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Holmes
Clerk of the Senate

Donnell T. Karp
Clerk of the House of Delegates

Nate Smaltz
President of the Senate

Gail Riddle
Speaker House of Delegates

The within is approved this the day of 1990.

Jason Carnett
Governor