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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991



ENROLLED

Com. Sub. for
HOUSE BILL No. 2602

(By Mr. Speaker Mr. Chambers and
Delegate Burk)
[By Request of the Executive]



Passed March 9, 1991

In Effect July 1, 1991 ~~Passage~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2602

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE BURK)
[By Request of the Executive]

[Passed March 9, 1991; in effect July 1, 1991.]

AN ACT to repeal sections four, five, six and eight, article two; of chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended be repealed; that sections nine-a, nine-b, nine-c and nineteen-a, article three; and sections eight, nine, ten, eleven, twelve, thirteen and fifteen, article eight, of said chapter be repealed; that section three, article ten, chapter eleven be amended and reenacted; that sections three, four, thirteen, fourteen, fifteen, twenty-three and twenty-four, article sixteen of said chapter be amended and reenacted; that sections two and twelve, article two, chapter fifteen of said code be amended and reenacted; that section twenty-three, article three, chapter seventeen-a be amended and reenacted; that section six, article one, chapter sixty be amended and reenacted; that sections seven, nine and twenty-one, article two of said chapter be amended and reenacted; that section seventeen, article three-a of said chapter be amended and reenacted; that section nineteen, article four of said chapter be amended and reenacted; that section seven, article six of said chapter be amended and reenacted; that sections three, twelve, thirteen and thirteen-a, article seven of said chapter be amended and reenacted;

and that sections four, five, seven, twenty-four, twenty-eight and twenty-nine, article eight of said chapter be amended and reenacted; all relating to including the barrel tax on nonintoxicating beer and the wine liter tax in the list of taxes covered under the tax procedures act; abolishing the office of nonintoxicating beer commissioner and substituting the alcohol beverage control commissioner therefor; defining the terms commissioner and tax commissioner in the nonintoxicating beer act; transferring administration of the beer barrel tax to the tax commissioner; providing for mandatory revocation of license for conviction of certain offenses; changing the title of chapter sixty to the alcohol beverage control act; increasing the salary of the administrator of the division of public safety; specifying the responsibilities of the superintendent under the alcohol beverage control act; increasing the salary of the alcohol beverage control commissioner; providing for a net annual profit of six and one-half million dollars; prohibiting consumption of alcoholic liquors or nonintoxicating beer by persons under twenty-one years of age when consumption or procurement of such beverages takes place at the premises of a private club licensee; changing provisions relating to revocation or suspension of licenses, money, penalties and assessment of costs; providing for a special alcohol beverage control enforcement fund, and hearing and appeal procedures to conform to provisions in article sixteen, chapter eleven of the code concerning beer licensees; and transferring administration of the liter tax on wine and wine labels registration to the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six and eight, article two of chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine-a, nine-b, nine-c and nineteen-a, article three; and sections eight, nine, ten, eleven, twelve, thirteen and fifteen, article eight of said chapter be repealed; that section three, article ten, chapter eleven be amended and reenacted; that sections three, four, thirteen, fourteen, fifteen, twenty-three and twenty-four, article sixteen of said chapter be amended and reenacted; that

sections two and twelve, article two, chapter fifteen of said code be amended and reenacted; that section twenty-three, article three, chapter seventeen-a be amended and reenacted; that section six, article one, chapter sixty be amended and reenacted; that sections seven, nine and twenty-one, article two of said chapter be amended and reenacted; that section seventeen, article three-a of said chapter be amended and reenacted; that section nineteen, article four of said chapter be amended and reenacted; that section seven, article six of said chapter be amended and reenacted; that sections three, twelve, thirteen and thirteen-a, article seven of said chapter be amended and reenacted; and that sections four, five, seven, twenty-four, twenty-eight and twenty-nine, article eight of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

1 (a) The provisions of this article shall apply to the
 2 inheritance and transfer taxes, the estate tax, and
 3 interstate compromise and arbitration of inheritance
 4 and death taxes, the business franchise registration
 5 certificate tax, the annual tax on incomes of certain
 6 carriers, the business and occupation tax, the consumers
 7 sales and service tax, the use tax, the cigarette tax, the
 8 soft drinks tax, the personal income tax, the corporation
 9 net income tax, the gasoline and special fuel excise tax,
 10 the motor carrier road tax and the tax relief for elderly
 11 homeowners and renters administered by the state tax
 12 commissioner. This article shall not apply to ad valorem
 13 taxes on real and personal property, the corporate
 14 license tax or any other tax not listed hereinabove,
 15 except that in the case of ad valorem taxes on real and
 16 personal property, when any return, claim, statement or
 17 other document is required to be filed, or any payment
 18 is required to be made within a prescribed period or
 19 before a prescribed date, and the applicable law
 20 requires delivery to the office of the sheriff of a county
 21 of this state, the methods prescribed in section five-f of
 22 this article for timely filing and payment to the tax
 23 commissioner or state tax department shall be the same

24 methods utilized for timely filing and payment with
25 such sheriff.

26 (b) The provisions of this article shall apply to the beer
27 barrel tax levied by article sixteen of this chapter and
28 to the wine liter tax levied by section four, article eight,
29 chapter sixty of this code.

30 (c) The provision of this article shall also apply to any
31 other article of this chapter when such application is
32 expressly provided for by the Legislature.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the
2 context clearly requires differently:

3 (1) "Brewer" or "manufacturer" means any person,
4 firm, association, partnership or corporation manufac-
5 turing, brewing, mixing, concocting, blending, bottling
6 or otherwise producing or importing or transshipping
7 from a foreign country nonintoxicating beer for sale at
8 wholesale to any licensed distributor.

9 (2) "Commissioner" means the West Virginia alcohol
10 beverage control commissioner.

11 (3) "Distributor" means include any person jobbing or
12 distributing nonintoxicating beer to retailers at whole-
13 sale and whose warehouse and chief place of business
14 shall be within this state.

15 (4) "Nonintoxicating beer" means all cereal malt
16 beverages or products of the brewing industry com-
17 monly referred to as beer, lager beer, ale and all other
18 mixtures and preparations produced by the brewing
19 industry, including malt coolers and containing at least
20 one half of one percent alcohol by volume, but not more
21 than four and two-tenths percent of alcohol by weight,
22 or six percent by volume, whichever is greater, all of
23 which are hereby declared to be nonintoxicating, and
24 the word "liquor" as used in chapter sixty of this code
25 shall not be construed to include or embrace nonintox-
26 icating beer nor any of the beverages, products,
27 mixtures or preparations included within this definition.

28 (5) "Original container" means the container used by
29 the brewer at the place of manufacturing, bottling, or
30 otherwise producing nonintoxicating beer for sale at
31 wholesale.

32 (6) "Person" means and include an individual, firm,
33 partnership, limited partnership, association or
34 corporation.

35 (7) "Retailer" means any person selling, serving, or
36 otherwise dispensing nonintoxicating beer and all
37 products regulated by this article, including, but not
38 limited to, any malt cooler, at his established and
39 licensed place of business.

40 (8) "Tax commissioner" means the tax commissioner
41 of the state of West Virginia or the commissioner's
42 designee.

**§11-16-4. Responsibility of alcohol beverage control
commissioner; administrators, employees,
and agents; administration and enforcement
expenses.**

1 (a) The alcohol beverage control commissioner de-
2 scribed under the provisions of article two, chapter sixty
3 of this code shall have sole responsibility for the
4 administration of this article, except for those respon-
5 sibilities expressly vested in the tax commissioner under
6 sections thirteen, fourteen and fifteen of this article.

7 All acts heretofore performed by the nonintoxicating
8 beer commissioner under previous proceedings of this
9 article are hereby again ratified and confirmed, and the
10 commissioner shall succeed to the same position pre-
11 viously maintained by the nonintoxicating beer commis-
12 sioner in all proceedings and official acts instituted and
13 perfected under the provisions of this article prior to the
14 effective date of this section.

15 (b) The commissioner shall appoint an adequate
16 number of competent persons to serve as administrators,
17 employees and agents of the commissioner for the
18 purpose of keeping all necessary accounts and records
19 required under the provisions of this article; investigat-
20 ing the books, accounts, records and other papers of

21 retailers, distributors and brewers; investigating
22 applicants for license and the places of business of
23 retailers, distributors and brewers; procuring evidence
24 with respect to violations of the provisions of this article,
25 and particularly for use at hearings held by the
26 commissioner and on proceedings instituted in court for
27 the purpose of revoking or suspending licenses here-
28 under; and such administrators, employees and agents
29 shall perform such other duties as the commissioner
30 may direct. Such administrators, employees and agents
31 shall have the right to enter any licensed premises in
32 the state in the performance of their duties at any hour
33 of the day or night when beer is being sold or consumed
34 on such licensed premises. Refusal by any licensee or by
35 any employee of a licensee to permit such administra-
36 tors, employees or agents to enter the licensed premises
37 shall be an additional cause for revocation or suspension
38 of the license of such licensee by the commissioner. The
39 compensation of such administrators, employees and
40 agents shall be fixed by the commissioner: *Provided,*
41 That the commissioner may employ up to five special
42 investigators who shall be non-classified exempt em-
43 ployees of the division.

44 (c) Services rendered the state by clerks, sheriffs,
45 commissioners in chancery and special commissioners,
46 designated by the court, and court reporters and
47 stenographers performing services for said commis-
48 sioner and fees of witnesses summoned on behalf of the
49 state in proceedings to revoke or suspend retailer's
50 licenses, shall be treated as part of the expenses of
51 administration and enforcement, and such officers and
52 said other persons shall be paid the same fees and
53 charges as would be chargeable for like services
54 performed for an individual; and the compensation of
55 such clerks, sheriffs and other persons, shall be paid out
56 of the amount allocated for the expense of administra-
57 tion enforcement, after the amount of such fees and
58 other charges shall be certified by the court to the
59 auditor.

**§11-16-13. Barrel tax on nonintoxicating beer; reporting
and paying to tax commissioner.**

1 (a) There is hereby levied and imposed, in addition to
2 the license taxes provided for in this article, a tax of five
3 dollars and fifty cents on each barrel of thirty-one
4 gallons and in like ratio on each part barrel of nonin-
5 toxicating beer manufactured in this state for sale
6 within this state, whether contained or sold in barrels,
7 bottles or other containers, and a like tax is hereby
8 levied and imposed upon all nonintoxicating beer
9 manufactured outside of this state and brought into this
10 state for sale within this state; but no nonintoxicating
11 beer manufactured, sold or distributed in this state is
12 subject to more than one barrel tax. The brewer
13 manufacturing or producing nonintoxicating beer
14 within this state for sale within this state shall pay the
15 barrel tax on such nonintoxicating beer, and, except as
16 provided otherwise, the distributor who is the original
17 consignee of nonintoxicating beer manufactured or
18 produced outside of this state, or who brings such
19 nonintoxicating beer into this state, shall pay the barrel
20 tax on such nonintoxicating beer manufactured or
21 produced outside of this state.

22 (b) On or before the tenth day of each month during
23 the license period, every brewer who manufactures or
24 produces nonintoxicating beer within this state shall file
25 a report in writing, under oath, to the tax commissioner,
26 in the form prescribed by the tax commissioner, stating
27 its total estimated sales of nonintoxicating beer to
28 distributors within this state during that month, and at
29 the same time shall pay the tax levied by this article
30 on such estimated monthly sales. On or before the tenth
31 day of each month during the license period, every
32 distributor who is the original consignee of nonintoxi-
33 cating beer manufactured or produced outside this state
34 or who brings such beer into this state for sale shall file
35 a report in writing, under oath, to the tax commissioner,
36 in the form prescribed by the tax commissioner, stating
37 its total estimated purchases of such nonintoxicating
38 beer during that month, and at the same time shall pay
39 the tax thereon levied by this article for such estimated
40 monthly purchase: *Provided*, That the tax commissioner
41 may allow, or require, a brewer who manufactures or
42 produces nonintoxicating beer outside this state to file

43 the required report and pay the required tax on behalf
44 of its distributor or distributors. Any brewer or
45 distributor who files a report under this subsection may
46 adjust its monthly estimated sales or purchases report
47 or reports by filing amended reports by the twenty-fifth
48 day of the reporting month.

49 (c) Every brewer or distributor who files a report
50 under subsection (b) of this section shall file a final
51 monthly report of said sales or purchases, in a form and
52 at a time prescribed by the tax commissioner, stating
53 actual nonintoxicating beer sales and purchases and
54 other information which the tax commissioner may
55 require, and shall include a remittance for any barrel
56 tax owed for actual sales or purchases made in excess
57 of the amount estimated for that month.

58 (d) Any brewer or distributor who files a report
59 pursuant to subsection (b) of this section reflecting an
60 underestimation of twenty-five percent or more of actual
61 sales or purchases of nonintoxicating beer as shown by
62 the report filed pursuant to subsection (c) of this section
63 shall be assessed a penalty of one percent of the total
64 taxes due in such prior month.

65 (e) Brewers and distributors shall keep all records
66 which relate to the sale or purchase in this state of
67 nonintoxicating beer for a period of three years unless
68 written approval for earlier disposal is granted by the
69 tax commissioner.

§11-16-14. Collection of unpaid license tax.

1 If any person whose report to the tax commissioner
2 as provided for in section thirteen of this article shows
3 him to be liable for any unpaid taxes, and who shall fail
4 to pay the same as provided herein, the tax commis-
5 sioner shall be authorized to institute collection reme-
6 dies provided for an article ten of this chapter. In
7 addition the alcohol beverage control commissioner may
8 revoke the license of any such person failing to pay any
9 such tax.

**§11-16-15. Records of brewer, manufacturer or distribu-
tor; collection of unpaid tax and penalty.**

1 Every brewer, manufacturer or distributor shall
2 maintain, keep and preserve for a period of three years
3 such record or records of nonintoxicating beer manufac-
4 tured, sold or distributed in this state, including, but not
5 limited to, coolers, together with such invoices, records,
6 receipts, bills of lading and other pertinent papers as
7 may be required by the tax commissioner, and the tax
8 commissioner shall have authority to inspect, by himself
9 or through the tax commissioner's duly designated
10 agent, the books, accounts, records and memoranda of
11 any person licensed under the provisions of this article,
12 and to examine, under oath, any officer, agent or
13 employee of any brewer, manufacturer or distributor.
14 The tax commissioner may require the production,
15 within this state at such time and place as the tax
16 commissioner may designate, of any books, accounts,
17 papers or records kept within or without the state, or
18 verified copies in lieu thereof, in order that an exam-
19 ination thereof may be made by the tax commissioner
20 or the tax commissioner's duly designated agents. If, as
21 the result of such examination, it shall be found that any
22 nonintoxicating beer, subject to the payment of a tax,
23 has been manufactured, brewed, sold or distributed by
24 any person, upon which the tax has not been paid, the
25 tax commissioner shall make an assessment of the
26 amount of tax so found to be due, and, in addition
27 thereto and as a part thereof, shall assess a penalty of
28 fifty percent of the amount of such tax and shall notify
29 such person of the total amount due. If the same remains
30 unpaid for a period of thirty days the tax commissioner
31 shall have the authority to collect the amount found to
32 be due by an appropriate legal proceeding in any of the
33 circuit courts in which an action for the collection of
34 unpaid taxes may be maintained under section fourteen
35 of this article, unless an appeal is taken from the action
36 of the tax commissioner as hereinafter provided. The tax
37 commissioner shall notify the alcohol beverage control
38 commissioner of any such unpaid assessment.

39 Within ten days after receipt of notice of any addi-
40 tional amount claimed to be due from any person as
41 shown by an examination by the tax commissioner, such
42 person, if he or she deems themselves aggrieved thereby,

43 shall so notify the tax commissioner and shall request
44 a hearing thereon and the tax commissioner shall set a
45 hearing into the matters raised by such notice, which
46 hearing shall be held as a contested case pursuant to
47 article ten of this chapter, except that the licensee shall
48 have the right of appeal from the tax commissioner's
49 findings only to the circuit court of Kanawha County,
50 West Virginia. Whether the finding of the tax commis-
51 sioner is affirmed or reversed, such circuit court shall
52 enter an order accordingly and either party shall then
53 have the right of appeal to the supreme court of appeals
54 of the state.

**§11-16-23. Revocation or suspension of license; monetary
penalty; hearing assessment of costs; estab-
lishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that a
2 licensee has (i) violated the provisions of section eighteen
3 of this article or of chapter sixty of this code, (ii) acted
4 in such a way as would have precluded initial or renewal
5 licensure or (iii) violated any rule or order promulgated
6 by the commissioner, the commissioner may:

7 (1) Revoke the licensee's license;

8 (2) Suspend the licensee's license;

9 (3) Place the licensee on probationary status for a
10 period not to exceed twelve months; and

11 (4) Impose a monetary penalty not to exceed one
12 thousand dollars for each violation where revocation is
13 not imposed.

14 (b) Any monetary penalty assessed and collected by
15 the commissioner shall be transmitted to the state
16 treasurer for deposit into the state treasury to the credit
17 of a special revenue fund designated the "Nonintoxicat-
18 ing Beer Enforcement Fund", which is hereby created.
19 All moneys collected, received and deposited in the
20 "Nonintoxicating Beer Enforcement Fund" shall be kept
21 and maintained for expenditures by the commissioner
22 for the purpose of enforcement of the statutes and rules
23 pertaining to nonintoxicating beer, and shall not be
24 treated by the state treasurer or state auditor as any

25 part of the general revenue of the state. At the end of
26 each fiscal year all funds in the nonintoxicating beer
27 enforcement fund in excess of two thousand dollars shall
28 be transferred to the general revenue fund.

29 (c) In addition to the grounds for revocation, suspen-
30 sion or other sanction of a license set forth in subsection
31 (a) of this section, conviction of the licensee of any
32 offense constituting a violation of the laws of this state
33 or of the United States relating to nonintoxicating beer
34 or alcoholic liquor shall be mandatory grounds for such
35 sanctioning of a license. Conviction of the licensee of any
36 violation of the laws of this state or of the United States
37 relating to prostitution or the sale, possession or
38 distribution of narcotics or controlled substances shall
39 be mandatory grounds for revocation of the licensee's
40 license for a period of at least one year.

**§11-16-24. Hearing on sanctioning of license; notice;
review of action of commissioner; clerk of
court to furnish commissioner copy of
order or judgment of conviction of licen-
see; assessment of costs.**

1 The commissioner shall not revoke nor suspend any
2 license issued pursuant to this article or impose any civil
3 penalties authorized thereby unless and until a hearing
4 shall be held after at least ten days notice to the licensee
5 of the time and place of such hearing, which notice shall
6 contain a statement or specification of the charges,
7 grounds or reasons for such proposed contemplated
8 action, and which shall be served upon the licensee as
9 notices under the West Virginia rules of civil procedure
10 or by certified mail, return receipt requested, to the
11 address for which license was issued; at which time and
12 place, so designated in the notice, the licensee shall have
13 the right to appear and produce evidence in his behalf,
14 and to be represented by counsel.

15 The commissioner shall have authority to summon
16 witnesses in the hearings before him, and fees of
17 witnesses summoned on behalf of the state in proceed-
18 ings to sanction licenses shall be treated as a part of the
19 expenses of administration and enforcement. Such fees

20 shall be the same as those in similar hearings in the
21 circuit courts of this state. The commissioner may, upon
22 a finding of violation, assess a licensee a sum, not to
23 exceed one hundred fifty dollars per violation to
24 reimburse the commissioner for expenditures for
25 witness fees, court reporter fees and travel costs
26 incurred in holding the hearing. Any moneys so assessed
27 shall be transferred to the nonintoxicating beer fund
28 created by section twenty-three of this article.

29 If, at the request of the licensee or on his motion, the
30 hearing shall be continued and shall not take place on
31 the day fixed by the commissioner in the notice above
32 provided for, then such licensee's license may be
33 suspended until the hearing and decision of the commis-
34 sioner, and in the event of revocation or suspension of
35 such license, upon hearing before the commissioner, the
36 licensee shall not be permitted to sell beer pending an
37 appeal as provided by this article. Any person contin-
38 uing to sell beer after his license has been suspended or
39 revoked, as hereinbefore provided, is guilty of a
40 misdemeanor and shall be punished as provided in
41 section nineteen of this article.

42 The action of the commissioner in revoking or
43 suspending a license shall be subject to review by the
44 circuit court of Kanawha County, West Virginia, in the
45 manner provided in chapter twenty-nine-a of this code,
46 when such licensee may be aggrieved by such revocation
47 or suspension. Petition for such review must be filed
48 with said circuit court within a period of thirty days
49 from and after the date of revocation or suspension by
50 the commissioner; and any licensee obtaining an order
51 for such review shall be required to pay the costs and
52 fees incident to transcribing, certifying and transmit-
53 ting the records pertaining to such matter to the circuit
54 court. An application to the supreme court of appeals
55 of West Virginia for a writ of error from any final order
56 of the circuit court in any such matter shall be made
57 within thirty days from and after the entry of such final
58 order.

59 All such hearings, upon notice to show cause why
60 license should be revoked or suspended, before the

61 commissioner, shall be held in the offices of the
 62 commissioner in Charleston, Kanawha County, West
 63 Virginia, unless otherwise provided in such notice, or
 64 agreed upon between the licensee and the commissioner;
 65 and when such hearing is held elsewhere than in the
 66 commissioner's office, the licensee may be required to
 67 make deposits of the estimated costs of such hearing.

68 Whenever any licensee has been convicted of any
 69 offense constituting a violation of the laws of this state
 70 or of the United States relating to nonintoxicating beer,
 71 or alcoholic liquor, and such conviction has become final,
 72 the clerk of the court in which such licensee has been
 73 convicted shall forward to the commissioner a certified
 74 copy of the order or judgment of conviction if such clerk
 75 has knowledge that the person so convicted is a licensee,
 76 together with the certification of such clerk that the
 77 conviction is final.

78 In the case of a Class B licensee with multiple licensed
 79 locations, the commissioner may, in his or her discretion,
 80 revoke, suspend or otherwise sanction, per the provisions
 81 of section twenty-three of this article, only the license
 82 for the location or locations involved in the unlawful
 83 conduct for which licensure is sanctioned, as opposed to
 84 all separately licensed locations of such licensee.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-2. Superintendent; departmental headquarters.

1 The department of public safety, heretofore estab-
 2 lished, shall be continued. The governor shall nominate,
 3 and by and with the advice and consent of the Senate,
 4 appoint a superintendent to be the executive and
 5 administrative head of the department. Notwithstand-
 6 ing any provision of this code to the contrary, the
 7 superintendent shall be paid an annual salary of sixty
 8 thousand dollars. The superintendent shall hold the rank
 9 of colonel and is entitled to all rights, benefits and
 10 privileges of regularly enlisted members. On the date of
 11 his appointment, the superintendent shall be at least
 12 thirty years of age. Before entering upon the discharge

13 of the duties of his office, he shall execute a bond in the
14 penalty of ten thousand dollars, payable to the state of
15 West Virginia and conditioned upon the faithful
16 performance of his duties. Such bond both as to form
17 and security shall be approved as to form by the
18 attorney general, and to sufficiency by the governor.

19 Before entering upon the duties of his office the
20 superintendent shall subscribe to the oath hereinafter
21 provided. The headquarters of the department, shall be
22 located in Kanawha County.

§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

1 (a) The West Virginia division of public safety shall
2 have the mission of statewide enforcement of criminal
3 and traffic laws with emphasis on providing basic
4 enforcement and citizen protection from criminal
5 depredation throughout the state and maintaining the
6 safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and
8 members of the division are hereby empowered:

9 (1) To make arrests anywhere within the state of any
10 persons charged with the violation of any law of this
11 state, or of the United States, and when a witness to the
12 perpetration of any offense or crime, or to the violation
13 of any law of this state, or of the United States, may
14 arrest without warrant; to arrest and detain any persons
15 suspected of the commission of any felony or misde-
16 meanor whenever complaint is made and warrant is
17 issued thereon for such arrest, and any person so
18 arrested shall be forthwith brought before the proper
19 tribunal for examination and trial in the county where
20 the offense for which any such arrest has been made was
21 committed;

22 (2) To serve criminal process issued by any court or
23 magistrate anywhere within this state (they shall not
24 serve civil process); and

25 (3) To cooperate with local authorities in detecting
26 crime and in apprehending any person or persons

27 engaged in or suspected of the commission of any crime,
28 misdemeanor or offense against the law of this state, or
29 of the United States, or of any ordinance of any
30 municipality in this state; and to take affidavits in
31 connection with any application to the division of
32 highways, division of motor vehicles and division of
33 public safety of West Virginia for any license, permit
34 or certificate that may be lawfully issued by these
35 divisions of state government.

36 (c) Members of the division of public safety are hereby
37 created forest patrolmen and game and fish wardens
38 throughout the state to do and perform any duties and
39 exercise any powers of such officers, and may apprehend
40 and bring before any court or magistrate having
41 jurisdiction of such matters, anyone violating any of the
42 provisions of chapters twenty, sixty and sixty-one of this
43 code, and the division of public safety shall at any time
44 be subject to the call of the West Virginia alcohol
45 beverage control commissioner to aid in apprehending
46 any person violating any of the provisions of said
47 chapter sixty of this code. They shall serve and execute
48 warrants for the arrest of any person and warrants for
49 the search of any premises issued by any properly
50 constituted authority, and shall exercise all of the
51 powers conferred by law upon a sheriff. They shall not
52 serve any civil process or exercise any of the powers of
53 such officer in civil matters.

54 (d) Any member of the division of public safety
55 knowing or having reason to believe that anyone has
56 violated the law may make complaint in writing before
57 any court or officer having jurisdiction and procure a
58 warrant for such offender, execute the same and bring
59 such person before the proper tribunal having jurisdiction.
60 He shall make return on all such warrants to such
61 tribunals and his official title shall be "member of the
62 division of public safety." Members of the division of
63 public safety may execute any summons or process
64 issued by any tribunal having jurisdiction requiring the
65 attendance of any person as a witness before such
66 tribunal and make return thereon as provided by law,
67 and any return by a member of the division of public

68 safety showing the manner of executing such warrant
69 or process shall have the same force and effect as if
70 made by a sheriff.

71 (e) Each member of the division of public safety, when
72 called by the sheriff of any county, or when the governor
73 by proclamation so directs, shall have full power and
74 authority within such county, or within the territory
75 defined by the governor, to direct and command
76 absolutely the assistance of any sheriff, deputy sheriff,
77 chief of police, policeman, game and fish warden, and
78 peace officer of the state, or of any county or municip-
79 ality therein, or of any able-bodied citizen of the United
80 States, to assist and aid in accomplishing the purposes
81 expressed in this article. When so called, any officer or
82 person shall, during the time his assistance is required,
83 be for all purposes, a member of the division of public
84 safety and subject to all the provisions of this article.

85 (f) The superintendent may also assign members of
86 the division to perform police duties on any turnpike or
87 toll road, or any section thereof, operated by the West
88 Virginia parkways, economic development and tourism
89 authority: *Provided*, That such authority shall reim-
90 burse the division of public safety for salaries paid to
91 such members, and shall either pay directly or reim-
92 burse the division for all other expenses of such group
93 of members in accordance with actual or estimated costs
94 determined by the superintendent.

95 (g) The division of public safety may develop proposals
96 for a comprehensive county or multi-county plan on the
97 implementation of an enhanced emergency service
98 telephone system and for causing a public meeting on
99 such proposals, all as set forth in section six-a, article
100 six, chapter twenty-four of this code.

101 (h) The superintendent may also assign members of
102 the division to administer tests for the issuance of
103 commercial drivers' licenses, operator and junior
104 operator licenses as provided for in section seven, article
105 two, chapter seventeen-b of this code: *Provided*, That the
106 division of motor vehicles shall reimburse the division
107 of public safety for salaries and employee benefits paid

108 to such members, and shall either pay directly or
109 reimburse the division for all other expenses of such
110 group of members in accordance with actual costs
111 determined by the superintendent.

112 (i) The superintendent shall be reimbursed by the
113 division of motor vehicles for salaries and employee
114 benefits paid to members of the division of public safety,
115 and shall either be paid directly or reimbursed by the
116 division of motor vehicles for all other expenses of such
117 group of members in accordance with actual costs
118 determined by the superintendent, for services per-
119 formed by such members relating to the duties and
120 obligations of the division of motor vehicles set forth in
121 chapters seventeen, seventeen-a, seventeen-b, seventeen-
122 c and seventeen-d of this code.

123 (j) The superintendent may at his discretion and upon
124 the written request of the West Virginia alcohol
125 beverage control commissioner assist the commissioner
126 in the coordination and enforcement of the alcohol
127 beverage control act and the general law concerning
128 nonintoxicating beer and wine.

**CHAPTER 17A. MOTOR VEHICLE
ADMINISTRATION REGISTRATION, CERTIFICATE
OF TITLE, AND ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION,
ISSUANCE OF CERTIFICATES OF TITLES.**

**§17A-3-23. Registration plates to state, county, municipal
and other governmental vehicles.**

1 Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any
3 of its departments, bureaus, commissions or institutions,
4 except vehicles used by the governor, treasurer, vehicles
5 operated by the department of public safety, not to
6 exceed six vehicles operated by conservation officers of
7 the department of natural resources, not to exceed ten
8 vehicles operated by the arson investigators of the office
9 of state fire marshal, and not to exceed ten vehicles
10 operated by inspectors of the office of the alcohol
11 beverage control commissioner, shall not be operated or
12 driven by any person unless it shall have displayed and

13 attached to the front thereof, in the same manner as
14 regular motor vehicle registration plates are attached,
15 a plate of the same size as the regular registration plate,
16 with white lettering on a green background bearing the
17 words "West Virginia" in one line and the words "State
18 Car" in another line, and the lettering for the words
19 "State Car" shall be of sufficient size to be plainly
20 readable from a distance of one hundred feet during
21 daylight.

22 Such vehicle shall also have attached to the rear a
23 plate bearing a number and such other words and
24 figures as the commissioner of motor vehicles shall
25 prescribe. The rear plate shall also be green with the
26 number in white.

27 On registration plates issued to vehicles owned by
28 counties, the color shall be white on red with the word
29 "County" on top of the plate and the words "West
30 Virginia" on the bottom. On any registration plates
31 issued to a city or municipality, the color shall be white
32 on blue with the word "City" on top, and the words
33 "West Virginia" on the bottom. The colors may not be
34 reversed and shall be of reflectorized material. The
35 commissioner is hereby authorized to designate the
36 colors and design of any other registration plates that
37 are issued without charge to any other agency in
38 accordance with the motor vehicle laws. The
39 registration plates issued to counties, municipalities and
40 other governmental agencies authorized to receive
41 colored plates hereunder shall be affixed to both the
42 front and rear of such vehicles: *Provided*, That upon
43 application and payment of fees, the commissioner is
44 hereby authorized to issue a maximum of five Class A
45 license plates per applicant to be used by county sheriffs
46 and municipalities on law enforcement vehicles while
47 engaged in undercover investigations.

48 No other registration plate shall be issued for, or
49 attached to, any such state-owned vehicle.

50 The commissioner of motor vehicles shall have a
51 sufficient number of both front and rear plates produced
52 to attach to all state-owned cars. The numbered

53 registration plates for such vehicles shall start with the
54 number "five hundred" and the commissioner shall issue
55 consecutive numbers for all state-owned cars.

56 It shall be the duty of each office, department, bureau,
57 commission or institution furnished any such vehicle to
58 have such plates affixed thereto prior to the operation
59 of such vehicle by any official or employee.

60 Any person violating the provisions of this section
61 shall be guilty of a misdemeanor, and, upon conviction
62 thereof, shall be fined not less than fifty dollars nor
63 more than one hundred dollars.

64 Magistrates shall have concurrent jurisdiction with
65 circuit and criminal courts for the enforcement of this
66 section.

CHAPTER 60. ALCOHOL BEVERAGE CONTROL.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-6. How chapter cited.

1 This chapter may be cited as the "Alcohol Beverage
2 Control Act".

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-7. Oath and bond.

1 Before entering upon the duties of the office, the
2 commissioner shall take and subscribe to the oath
3 prescribed by section 5, article IV, of the constitution
4 of this state, and shall give bond in the penalty of
5 twenty-five thousand dollars, to be approved by the
6 governor and conditioned upon the faithful performance
7 of the duties of the office and the accounting for and
8 payment into the treasury of all moneys coming into the
9 commissioner's custody by virtue of the office. The bond
10 and oath shall be filed with the secretary of state.

§60-2-9. Salary and expenses.

1 The commissioner shall receive an annual salary of
2 sixty thousand dollars, and shall be paid actual and
3 necessary traveling expenses incurred in performance of
4 the official duties of the office.

§60-2-21. Audit.

1 At the close of each fiscal year the legislative auditor
2 shall audit the affairs of the West Virginia alcohol
3 beverage control commissioner and report the results of
4 the audit to the governor. The cost of the audit shall be
5 paid from the operating fund.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

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

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

12 (b) Wholesale prices shall be established in order to
13 yield a net profit for the general fund of not less than
14 six million five hundred thousand dollars annually on an
15 annual volume of business equal to the average for the
16 past three years. The net revenue derived from the sale
17 of alcoholic liquors shall be deposited into the general
18 revenue fund in the manner provided in section
19 seventeen, article three of this chapter.

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

27 (d) A retail licensee shall purchase all liquor, other
28 than wine, for resale in this state only from the

29 commissioner, and the provisions of sections twelve and
30 thirteen, article six of this chapter, shall not apply to
31 the transportation of such liquor: *Provided*, That a retail
32 licensee shall purchase wine from a distributor thereof
33 who is duly licensed under article eight of this chapter.
34 All liquor, other than wine, purchased by retail licensees
35 shall be stored in the state at the retail outlet or outlets
36 operated by the retail licensee: *Provided, however*, That
37 the commissioner, in his or her discretion, may upon
38 written request permit a retail licensee to store liquor
39 at a site other than the retail outlet or outlets.

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

ARTICLE 4. LICENSES.

§60-4-19. When license revoked.

1 The commissioner may revoke a license issued under
2 this article upon a finding that:

3 (1) The licensee is not a suitable person;

4 (2) The place occupied by the licensee is not a suitable
5 place;

6 (3) The licensee has violated a provision of this chapter
7 or a regulation made by the commission under the
8 authority of this chapter; or

9 (4) The licensee has failed to comply with the spirit
10 and intent of this chapter by encouraging intemperance,
11 the unlawful consumption of alcoholic liquors, or
12 otherwise.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

1 A person shall not:

2 (1) Manufacture or sell in this state without a license
3 any alcoholic liquor except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic
5 liquor without a license except as permitted by this
6 article;

7 (3) Sell without a license any alcoholic liquor other
8 than permitted by this article;

9 (4) Adulterate any alcoholic liquor by the addition of
10 any drug, methyl alcohol, crude, unrectified or impure
11 form of ethyl alcohol, or other foreign or deleterious
12 substance or liquid;

13 (5) Refill, with alcoholic liquor, any bottle or other
14 container in which alcoholic liquor has been sold at
15 retail in this state;

16 (6) Advertise any alcoholic liquor in this state except
17 in accordance with the rules and regulations of the
18 commission; or

19 (7) Distribute, deal in, process, or use crowns, stamps
20 or seals required under the authority of this chapter,
21 except in accordance with the rules and regulations
22 prescribed by the commission.

23 A person who violates any provision of this section
24 shall be guilty of a misdemeanor and upon conviction
25 shall be fined not less than fifty nor more than five
26 hundred dollars, or confined in jail not less than thirty
27 days nor more than one year or both such fine and
28 imprisonment, for the first offense. Upon conviction of
29 a second or subsequent offense, the court may in its
30 discretion impose a penalty of confinement in the
31 penitentiary for a period not to exceed three years.

32 An indictment for any first violation of subdivisions
33 one, two and three of this section, or any of them, shall
34 be sufficient if in form or effect as follows:

35 State of West Virginia

36 County of _____, to wit:

37 The Grand Jurors of the State of West Virginia, in
38 and for the body of the County of _____,

39 upon their oaths present that _____, on
40 the _____ day of _____, 19____, in the
41 said County of _____, did unlawfully,
42 without a State license and without authorization under
43 the Alcohol Beverage Control Act, manufacture and sell,
44 and aid and abet in the manufacture and sale of a
45 quantity of alcoholic liquor, against the peace and
46 dignity of the State.

47 Any indictment under this section shall otherwise be
48 in conformity with section one, article nine, chapter
49 sixty-two of the code.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

**§60-7-3. Sale of alcoholic liquors and nonintoxicating
beer by licensee authorized.**

1 Notwithstanding any other provisions of this code to
2 the contrary, licensees are hereby authorized to sell
3 alcoholic liquors, other than in sealed packages, for
4 consumption on the premises of the licensees, to their
5 members and their guests in accordance with the
6 provisions of this article. The licensees may keep and
7 maintain on their premises a supply of those alcoholic
8 liquors in such quantities as may be appropriate for the
9 conduct of operations thereof.

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

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

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

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

11 (3) Sell, give away, or permit the sale of, gift to, or
12 the procurement of any nonintoxicating beer, wine or
13 alcoholic liquors for or to, or permit the consumption of

14 nonintoxicating beer, wine or alcoholic liquors on the
15 licensee's premises, by any person less than twenty-one
16 years of age;

17 (4) Sell, give away, or permit the sale of, gift to, or
18 the procurement of any alcoholic liquors, for or to any
19 mental incompetent, or for a person who is physically
20 incapacitated due to consumption of alcoholic liquor or
21 the use of drugs;

22 (5) Sell, give or dispense alcoholic liquors in or on any
23 licensed premises or in any rooms directly connected
24 therewith, between the hours of three o'clock a.m. and
25 one o'clock p.m. on any Sunday;

26 (6) Permit the consumption by, or serve to, on the
27 licensed premises any alcoholic liquors, covered by this
28 article, to any person who is less than twenty-one years
29 of age;

30 (7) With the intent to defraud, alter, change or
31 misrepresent the quality, quantity or brand name of any
32 alcoholic liquor;

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

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

40 (10) Violate any reasonable rule or regulation of the
41 commissioner.

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

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

52 imprisonment.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

1 (a) Upon a determination by the commissioner that a
2 licensee has (i) violated the provisions of article sixteen,
3 chapter eleven or chapter sixty of this code, (ii) acted
4 in such a way as would have precluded initial or renewal
5 licensure or (iii) violated any rule or order promulgated
6 by the commissioner, the commissioner may impose any
7 one or a combination of the following sanctions:

8 (1) Revoke the licensee's license;

9 (2) Suspend the licensee's license;

10 (3) Place the licensee on probationary status for a
11 period not to exceed twelve months; and

12 (4) Impose a monetary penalty not to exceed one
13 thousand dollars for each violation where revocation is
14 not imposed.

15 (b) Any monetary penalty assessed and collected by
16 the commissioner shall be transmitted to the state
17 treasurer for deposit into the state treasury to the credit
18 of a special revenue fund designated "The Alcohol
19 Beverage Control Enforcement Fund", which is hereby
20 created. All moneys collected, received and deposited in
21 the "Alcohol Beverage Control Enforcement Fund" shall
22 be kept and maintained for expenditures by the
23 commissioner for the purpose of enforcement of the
24 statutes and rules pertaining to alcoholic liquor, and
25 shall not be treated by the state treasurer or state
26 auditor as any part of the general revenue of the state.
27 At the end of each fiscal year all funds in the alcohol
28 beverage control enforcement fund in excess of two
29 thousand dollars shall be transferred to the general
30 revenue fund.

31 (c) In addition to the grounds for revocation,
32 suspension or other sanction of a license set forth in
33 subsection (a) of this section, conviction of the licensee
34 of any offense constituting a violation of the laws of this

35 state or of the United States relating to alcoholic liquor,
36 nonintoxicating beer or gambling shall be mandatory
37 grounds for such sanctioning of a license. Conviction of
38 the licensee of any violation of the laws of this state or
39 of the United States relating to prostitution, or the sale,
40 possession or distribution of narcotics or controlled
41 substances shall be mandatory grounds for revocation of
42 the licensee's license for a period of at least one year.

**§60-7-13a. Hearing on sanctioning of license; notice;
review of action of commissioner; clerk of
court to furnish commissioner copy of
order or judgment of conviction of
licensee; assessment of costs.**

1 The commissioner shall not revoke or suspend any
2 license issued pursuant to this article or impose any civil
3 penalties authorized thereby unless and until a hearing
4 shall be held after at least ten days notice to the licensee
5 of the time and place of such hearing, which notice shall
6 contain a statement or specification of the charges,
7 grounds or reasons for such proposed contemplated
8 action, and which shall be served upon the licensee as
9 notices under the West Virginia rules of civil procedure
10 or by certified mail, return receipt requested, to the
11 address for which license was issued; at which time and
12 place, so designated in the notice, the licensee shall have
13 the right to appear and produce evidence in his behalf,
14 and to be represented by counsel: *Provided*, That the
15 commissioner may forthwith suspend any such license
16 when the commissioner believes the public safety will
17 be adversely affected by the licensee's continued
18 operation.

19 The commissioner shall have authority to summon
20 witnesses in the hearing before him, and fees of
21 witnesses summoned on behalf of the state in
22 proceedings to sanction licenses shall be treated as a
23 part of the expenses of administration and enforcement.
24 Such fees shall be the same as those in similar hearings
25 in the circuit courts of this state. The commissioner may,
26 upon a finding of violation, assess a licensee a sum, not
27 to exceed one hundred fifty dollars per violation, to
28 reimburse the commissioner for expenditures of witness

29 fees, court reporter fees and travel costs incurred in
30 holding the hearing. Any moneys so assessed shall be
31 transferred to the alcohol beverage control enforcement
32 fund created by section thirteen-a of this article.

33 If, at the request of the licensee or on his motion, the
34 hearing shall be continued and shall not take place on
35 the day fixed by the commissioner in the notice above
36 provided for, then such licensee's license may be
37 suspended until the hearing and decision of the
38 commissioner, and in the event of revocation or
39 suspension of such license, upon hearing before the
40 commissioner, the licensee shall not be permitted to sell
41 alcoholic liquor pending an appeal as provided by this
42 article. Any person continuing to sell alcoholic liquor
43 after his license has been suspended or revoked, as
44 hereinbefore provided, is guilty of a misdemeanor and
45 shall be punished as provided in section twelve of this
46 article.

47 The action of the commissioner in revoking or
48 suspending a license shall be subject to review by the
49 circuit court of Kanawha County, West Virginia, in the
50 manner provided in chapter twenty-nine-a of this code,
51 when such licensee may be aggrieved by such revocation
52 or suspension. Petition for such review must be filed
53 with said circuit court within a period of thirty days
54 from and after the date of revocation or suspension by
55 the commissioner; and any licensee obtaining an order
56 for such review shall be required to pay the costs and
57 fees incident to transcribing, certifying and
58 transmitting the records pertaining to such matter to
59 the circuit court. An application to the supreme court
60 of appeals of West Virginia for a writ of error from any
61 final order of the circuit court in any such matter shall
62 be made within thirty days from and after the entry of
63 such final order.

64 All such hearings, upon notice to show cause why
65 license should be revoked or suspended, before the
66 commissioner shall be held in the offices of the
67 commissioner in Charleston, Kanawha County, West
68 Virginia, unless otherwise provided in such notice, or
69 agreed upon between the licensee and the commissioner;

70 and when such hearing is held elsewhere than in the
71 commissioner's office, the licensee may be required to
72 make deposits of the estimated costs of such hearing.

73 Whenever any licensee has been convicted of any
74 offense constituting a violation of the laws of this state
75 or of the United States relating to alcoholic liquor, or
76 nonintoxicating beer, and such conviction has become
77 final, the clerk of the court in which such licensee has
78 been convicted shall forward to the commissioner a
79 certified copy of the order or judgment of conviction if
80 such clerk has knowledge that the person so convicted
81 is a licensee, together with the certification of such clerk
82 that the conviction is final. The commissioner shall
83 report violations of any of the provisions of section
84 twelve or twelve-a of this article to the prosecuting
85 attorney of the county in which the licensed premises is
86 located.

ARTICLE 8. SALE OF WINE.

§60-8-4. Liter tax.

1 There is hereby levied and imposed on all wine sold
2 after the thirtieth day of April, one thousand nine
3 hundred eighty-three, by suppliers to distributors,
4 except wine sold to the commissioner, a tax of twenty-
5 six and four hundred six-thousandths cents per liter.

6 Before the sixteenth day of each month thereafter,
7 every supplier shall make a written report under oath
8 to the tax commissioner showing the identity of the
9 purchaser, the quantity, label and alcoholic content of
10 wine sold by the supplier to West Virginia distributors
11 during the preceding month, and at the same time shall
12 pay the tax imposed by this article on the wine sold to
13 the distributor during the preceding month.

14 The reports shall contain other information and be in
15 the form the tax commissioner may require. For
16 purposes of this article, the reports required by this
17 section shall be considered tax returns covered by the
18 provisions of article ten, chapter eleven of this code.

19 No wine imported, sold or distributed in this state
20 shall be subject to more than one liter tax.

§60-8-5. Refund or credit of taxes.

1 The tax commissioner shall refund, or credit on a
2 subsequent return, any tax which has been erroneously
3 or illegally collected. In the event that a licensee, while
4 the owner of wine on which the tax imposed by this
5 article has been paid, loses such wine through fire or
6 casualty, other than breakage occurring on the premises
7 of the licensee because such wine has been declared by
8 the alcohol beverage control commissioner to be unfit for
9 sale, and the amount of tax paid exceeds fifty dollars,
10 the tax commissioner shall refund the tax paid. The
11 alcohol beverage control commissioner shall promulgate
12 regulations establishing the procedure and nature of
13 proof required in case of any claim for refund or credit.

§60-8-7. Records; inspection.

1 Every person who sells or ships wine to a distributor,
2 and every distributor, shall maintain records of all sales,
3 shipments and deliveries, including invoices, records,
4 receipts, bills of lading and other pertinent papers
5 required by the commissioner. All such records shall be
6 preserved for at least two years. The tax commissioner
7 may inspect the books, accounts and records of any
8 licensee and examine, under oath, any officer, agent or
9 employee of any licensee or any person engaged in the
10 business of selling, shipping or delivering wine to a
11 distributor. The tax commissioner may require the
12 production, within this state at the time and place the
13 tax commissioner may designate, of any books, accounts,
14 papers or records kept within or without the state, or
15 verified copies in lieu thereof, in order that an
16 examination thereof may be made by the tax
17 commissioner or the tax commissioner's duly designated
18 agents.

§60-8-24. Disposition of revenue.

1 (a) All fees collected by the commissioner under the
2 provisions of this article shall be deposited in the state
3 treasury and credited to a special fund to be known as
4 the "wine license special fund". All moneys in such
5 special fund may be expended only for the
6 administration of the provisions of this article or, to the

7 extent of any excess, for the administration of this
8 chapter or as may be appropriate by law.

9 (b) The liter tax imposed and collected by the tax
10 commissioner under the provisions of this article shall
11 be paid into the state treasury and deposited in the
12 general revenue fund of the state.

13 (c) All moneys collected by the alcohol beverage
14 control commissioner and the tax commissioner under
15 the provisions of this article shall be remitted to the
16 state treasury monthly within fifteen days after the end
17 of each month.

§60-8-28. Registration of labels.

1 Every distributor and farm winery offering wine for
2 sale under this article shall register with the tax
3 commissioner each label offered for sale in the state and
4 shall pay a fee of three dollars for the registration of
5 such label. No wine may be sold under this article unless
6 its label has been registered.

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

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

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

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

Homer Heck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

Harold E. Atkins
.....
Clerk of the Senate

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

Kell Bennett
.....
President of the Senate

Bob Call
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *April* 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:10 am