WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

Com. Sel., for

HOUSE BILL No. 2602

(By Mr. Speaker, Mr. Chamberlain, and)

Delegate, Burnt)

[By Request of the Executive]

Passed  March 9, 1991

In Effect July 1, 1991

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eight, article two; of chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended be repealed; that sections nine-a, nine-b, nine-c and nineteen-a, article three; and sections eight, nine, ten, eleven, twelve, thirteen and fifteen, article eight, of said chapter be repealed; that section three, article ten, chapter eleven be amended and reenacted; that sections three, four, thirteen, fourteen, fifteen, twenty-three and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

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

§11-16-3. Definitions.

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

(1) "Brewer" or "manufacturer" means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

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

(3) "Distributor" means include any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

(4) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating, and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.
(5) “Original container” means the container used by the brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer for sale at wholesale.

(6) “Person” means and include an individual, firm, partnership, limited partnership, association or corporation.

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

(8) “Tax commissioner” means the tax commissioner of the state of West Virginia or the commissioner's designee.

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

(a) The alcohol beverage control commissioner described under the provisions of article two, chapter sixty of this code shall have sole responsibility for the administration of this article, except for those responsibilities expressly vested in the tax commissioner under sections thirteen, fourteen and fifteen of this article.

All acts heretofore performed by the nonintoxicating beer commissioner under previous proceedings of this article are hereby again ratified and confirmed, and the commissioner shall succeed to the same position previously maintained by the nonintoxicating beer commissioner in all proceedings and official acts instituted and perfected under the provisions of this article prior to the effective date of this section.

(b) The commissioner shall appoint an adequate number of competent persons to serve as administrators, employees and agents of the commissioner for the purpose of keeping all necessary accounts and records required under the provisions of this article; investigating the books, accounts, records and other papers of
retailers, distributors and brewers; investigating
applicants for license and the places of business of
retailers, distributors and brewers; procuring evidence
with respect to violations of the provisions of this article,
and particularly for use at hearings held by the
commissioner and on proceedings instituted in court for
the purpose of revoking or suspending licenses here-
under; and such administrators, employees and agents
shall perform such other duties as the commissioner
may direct. Such administrators, employees and agents
shall have the right to enter any licensed premises in
the state in the performance of their duties at any hour
of the day or night when beer is being sold or consumed
on such licensed premises. Refusal by any licensee or by
any employee of a licensee to permit such administra-
tors, employees or agents to enter the licensed premises
shall be an additional cause for revocation or suspension
of the license of such licensee by the commissioner. The
compensation of such administrators, employees and
agents shall be fixed by the commissioner: Provided,
That the commissioner may employ up to five special
investigators who shall be non-classified exempt em-
ployees of the division.

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

§11-16-13. Barrel tax on nonintoxicating beer; reporting
and paying to tax commissioner.
(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five dollars and fifty cents on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state.

(b) On or before the tenth day of each month during the license period, every brewer who manufactures or produces nonintoxicating beer within this state shall file a report in writing, under oath, to the tax commissioner, in the form prescribed by the tax commissioner, stating its total estimated sales of nonintoxicating beer to distributors within this state during that month, and at the same time shall pay the tax levied by this article on such estimated monthly sales. On or before the tenth day of each month during the license period, every distributor who is the original consignee of nonintoxicating beer manufactured or produced outside this state or who brings such beer into this state for sale shall file a report in writing, under oath, to the tax commissioner, in the form prescribed by the tax commissioner, stating its total estimated purchases of such nonintoxicating beer during that month, and at the same time shall pay the tax thereon levied by this article for such estimated monthly purchase: Provided, That the tax commissioner may allow, or require, a brewer who manufactures or produces nonintoxicating beer outside this state to file
the required report and pay the required tax on behalf
of its distributor or distributors. Any brewer or
distributor who files a report under this subsection may
adjust its monthly estimated sales or purchases report
or reports by filing amended reports by the twenty-fifth
day of the reporting month.

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

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

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


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

§11-16-15. Records of brewer, manufacturer or distribu-
tor; collection of unpaid tax and penalty.
Every brewer, manufacturer or distributor shall maintain, keep and preserve for a period of three years such record or records of nonintoxicating beer manufactured, sold or distributed in this state, including, but not limited to, coolers, together with such invoices, records, receipts, bills of lading and other pertinent papers as may be required by the tax commissioner, and the tax commissioner shall have authority to inspect, by himself or through the tax commissioner's duly designated agent, the books, accounts, records and memoranda of any person licensed under the provisions of this article, and to examine, under oath, any officer, agent or employee of any brewer, manufacturer or distributor. The tax commissioner may require the production, within this state at such time and place as the tax commissioner may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the tax commissioner or the tax commissioner's duly designated agents. If, as the result of such examination, it shall be found that any nonintoxicating beer, subject to the payment of a tax, has been manufactured, brewed, sold or distributed by any person, upon which the tax has not been paid, the tax commissioner shall make an assessment of the amount of tax so found to be due, and, in addition thereto and as a part thereof, shall assess a penalty of fifty percent of the amount of such tax and shall notify such person of the total amount due. If the same remains unpaid for a period of thirty days the tax commissioner shall have the authority to collect the amount found to be due by an appropriate legal proceeding in any of the circuit courts in which an action for the collection of unpaid taxes may be maintained under section fourteen of this article, unless an appeal is taken from the action of the tax commissioner as hereinafter provided. The tax commissioner shall notify the alcohol beverage control commissioner of any such unpaid assessment.

Within ten days after receipt of notice of any additional amount claimed to be due from any person as shown by an examination by the tax commissioner, such person, if he or she deems themselves aggrieved thereby,
shall so notify the tax commissioner and shall request a hearing thereon and the tax commissioner shall set a hearing into the matters raised by such notice, which hearing shall be held as a contested case pursuant to article ten of this chapter, except that the licensee shall have the right of appeal from the tax commissioner's findings only to the circuit court of Kanawha County, West Virginia. Whether the finding of the tax commissioner is affirmed or reversed, such circuit court shall enter an order accordingly and either party shall then have the right of appeal to the supreme court of appeals of the state.

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

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

1. Revoke the licensee's license;
2. Suspend the licensee's license;
3. Place the licensee on probationary status for a period not to exceed twelve months; and
4. Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated the "Nonintoxicating Beer Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to nonintoxicating beer, and shall not be treated by the state treasurer or state auditor as any
part of the general revenue of the state. At the end of
each fiscal year all funds in the nonintoxicating beer
enforcement fund in excess of two thousand dollars shall
be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspen-
sion or other sanction of a license set forth in subsection
(a) of this section, conviction of the licensee of any
offense constituting a violation of the laws of this state
or of the United States relating to nonintoxicating beer
or alcoholic liquor shall be mandatory grounds for such
sanctioning of a license. Conviction of the licensee of any
violation of the laws of this state or of the United States
relating to prostitution or the sale, possession or
distribution of narcotics or controlled substances shall
be mandatory grounds for revocation of the licensee's
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.

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

The commissioner shall have authority to summon
witnesses in the hearings before him, and fees of
witnesses summoned on behalf of the state in proceed-
ings to sanction licenses shall be treated as a part of the
expenses of administration and enforcement. Such fees
shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed one hundred fifty dollars per violation to reimburse the commissioner for expenditures for witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the nonintoxicating beer fund created by section twenty-three of this article.

If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner in the notice above provided for, then such licensee's license may be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of such license, upon hearing before the commissioner, the licensee shall not be permitted to sell beer pending an appeal as provided by this article. Any person continuing to sell beer after his license has been suspended or revoked, as hereinbefore provided, is guilty of a misdemeanor and shall be punished as provided in section nineteen of this article.

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

All such hearings, upon notice to show cause why license should be revoked or suspended, before the
commissioner, shall be held in the offices of the
commissioner in Charleston, Kanawha County, West
Virginia, unless otherwise provided in such notice, or
agreed upon between the licensee and the commissioner;
and when such hearing is held elsewhere than in the
commissioner’s office, the licensee may be required to
make deposits of the estimated costs of such hearing.

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

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

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

The department of public safety, heretofore estab-
lished, shall be continued. The governor shall nominate,
and by and with the advice and consent of the Senate,
appoint a superintendent to be the executive and
administrative head of the department. Notwithstand-
ing any provision of this code to the contrary, the
superintendent shall be paid an annual salary of sixty
thousand dollars. The superintendent shall hold the rank
of colonel and is entitled to all rights, benefits and
privileges of regularly enlisted members. On the date of
his appointment, the superintendent shall be at least
thirty years of age. Before entering upon the discharge
of the duties of his office, he shall execute a bond in the penalty of ten thousand dollars, payable to the state of West Virginia and conditioned upon the faithful performance of his duties. Such bond both as to form and security shall be approved as to form by the attorney general, and to sufficiency by the governor.

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

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

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

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

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, may arrest without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever complaint is made and warrant is issued thereon for such arrest, and any person so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;

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

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons
engaged in or suspected of the commission of any crime, 
misdemeanor or offense against the law of this state, or 
of the United States, or of any ordinance of any 
municipality in this state; and to take affidavits in 
connection with any application to the division of 
highways, division of motor vehicles and division of 
public safety of West Virginia for any license, permit 
or certificate that may be lawfully issued by these 
divisions of state government.

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

(d) Any member of the division of public safety 
knowing or having reason to believe that anyone has 
violated the law may make complaint in writing before 
any court or officer having jurisdiction and procure a 
warrant for such offender, execute the same and bring 
such person before the proper tribunal having jurisdic-
tion. He shall make return on all such warrants to such 
tribunals and his official title shall be “member of the 
division of public safety.” Members of the division of 
public safety may execute any summons or process 
issued by any tribunal having jurisdiction requiring the 
attendance of any person as a witness before such 
tribunal and make return thereon as provided by law, 
and any return by a member of the division of public
safety showing the manner of executing such warrant
or process shall have the same force and effect as if
made by a sheriff.

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

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

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

(h) The superintendent may also assign members of
the division to administer tests for the issuance of
commercial drivers' licenses, operator and junior
operator licenses as provided for in section seven, article
two, chapter seventeen-b of this code: Provided, That the
division of motor vehicles shall reimburse the division
of public safety for salaries and employee benefits paid
to such members, and shall either pay directly or reimbursed the division for all other expenses of such group of members in accordance with actual costs determined by the superintendent.

(i) The superintendent shall be reimbursed by the division of motor vehicles for salaries and employee benefits paid to members of the division of public safety, and shall either be paid directly or reimbursed by the division of motor vehicles for all other expenses of such group of members in accordance with actual costs determined by the superintendent, for services performed by such members relating to the duties and obligations of the division of motor vehicles set forth in chapters seventeen, seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code.

(j) The superintendent may at his discretion and upon the written request of the West Virginia alcohol beverage control commissioner assist the commissioner in the coordination and enforcement of the alcohol beverage control act and the general law concerning 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.

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

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

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

On registration plates issued to vehicles owned by counties, the color shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word “City” on top, and the words “West Virginia” on the bottom. The colors may not be reversed and shall be of reflectorized material. The commissioner is hereby authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of such vehicles: Provided, That upon application and payment of fees, the commissioner is hereby authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law enforcement vehicles while engaged in undercover investigations.

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

The commissioner of motor vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered
registration plates for such vehicles shall start with the
number “five hundred” and the commissioner shall issue
consecutive numbers for all state-owned cars.

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

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

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

CHAPTER 60. ALCOHOL BEVERAGE CONTROL.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-6. How chapter cited.

This chapter may be cited as the “Alcohol Beverage
Control Act”.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-7. Oath and bond.

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


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

(b) Wholesale prices shall be established in order to
yield a net profit for the general fund of not less than
six million five hundred thousand dollars annually on an
annual volume of business equal to the average for the
past three years. The net revenue derived from the sale
of alcoholic liquors shall be deposited into the general
revenue fund in the manner provided in section
seventeen, 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: Provided, however, That
the commissioner, in his or her discretion, may upon
written request permit a retail licensee to store liquor
at a site other than the retail outlet or outlets.
(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.

ARTICLE 4. LICENSES.
§60-4-19. When license revoked.
The commissioner may revoke a license issued under
this article upon a finding that:
(1) The licensee is not a suitable person;
(2) The place occupied by the licensee is not a suitable
place;
(3) The licensee has violated a provision of this chapter
or a regulation made by the commission under the
authority of this chapter; or
(4) The licensee has failed to comply with the spirit
and intent of this chapter by encouraging intemperance,
the unlawful consumption of alcoholic liquors, or
otherwise.

ARTICLE 6. MISCELLANEOUS PROVISIONS.
§60-6-7. Specific acts forbidden; indictment.
A person shall not:

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

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

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

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

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

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

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

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

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

State of West Virginia

County of ________________________, to wit:

The Grand Jurors of the State of West Virginia, in and for the body of the County of ________________________,
upon their oaths present that __________________, on
the ____ day of ____________, 19__, in the
said County of __________________, did unlawfully,
without a State license and without authorization under
the Alcohol Beverage Control Act, manufacture and sell,
and aid and abet in the manufacture and sale of a
quantity of alcoholic liquor, against the peace and
dignity of the State.

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any person who violates any of the foregoing
provisions shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be punished by a fine of not less
than one hundred dollars nor more than five hundred
dollars, or by imprisonment in the county jail for a
period not to exceed one year, or by both fine and
§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

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

(1) Revoke the licensee’s license;

(2) Suspend the licensee’s license;

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

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

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

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee 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
fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund created by section thirteen-a of this article.

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

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

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner;
and when such hearing is held elsewhere than in the
commissioner's office, the licensee may be required to
make deposits of the estimated costs of such hearing.

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

ARTICLE 8. SALE OF WINE.

§60-8-4. Liter tax.

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

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

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

No wine imported, sold or distributed in this state
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 subsequent return, any tax which has been erroneously or illegally collected. In the event that a licensee, while the owner of wine on which the tax imposed by this article has been paid, loses such wine through fire or casualty, other than breakage occurring on the premises of the licensee because such wine has been declared by the alcohol beverage control commissioner to be unfit for sale, and the amount of tax paid exceeds fifty dollars, the tax commissioner shall refund the tax paid. The alcohol beverage control commissioner shall promulgate regulations establishing the procedure and nature of 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, and every distributor, shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading and other pertinent papers required by the commissioner. All such records shall be preserved for at least two years. The tax commissioner may inspect the books, accounts and records of any licensee and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor. The tax commissioner may require the production, within this state at the time and place the tax commissioner may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the tax commissioner or the tax commissioner's duly designated agents.

§60-8-24. Disposition of revenue.

1 (a) All fees collected by the commissioner under the provisions of this article shall be deposited in the state treasury and credited to a special fund to be known as the "wine license special fund". All moneys in such special fund may be expended only for the administration of the provisions of this article or, to the
extent of any excess, for the administration of this chapter or as may be appropriate by law.

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

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

§60-8-28. Registration of labels.

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

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

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

The penal sum of the bond for distributors shall be ten thousand dollars, and the penal sum of the bond for suppliers shall be twenty-five thousand dollars. Each distributor shall be required to furnish separate bond for each location or separate place of business from which wine is distributed, sold, or delivered. Revocation or forfeiture of the bond furnished for any such location may, in the discretion of the tax commissioner, cause the revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or forfeiture.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ..../

the 2nd

day of ....... 1991.

Governor