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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. 4494

(By Delegates Cerra and Walker)

— ● —

Passed March 7 1992

In Effect From Passage

ENROLLED

H. B. 4494

(By DELEGATES CERRA AND WALKER)

[Passed March 7, 1992; in effect from passage.]

AN ACT to amend and reenact sections four and nine, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend section twenty-three, article three, chapter seventeen-a of said code; and to amend and reenact sections two and three, article eight, chapter sixty of said code, relating to alcohol beverage control special investigators; registration plates for vehicles operated by inspectors of the office of the alcohol beverage control commissioner; and requiring caterers and party supply stores to obtain licenses for the sale of beer and wine.

Be it enacted by the Legislature of West Virginia:

That sections four and nine, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-three, article three, chapter seventeen-a of said code be amended and reenacted; and that sections two and three, article eight, chapter sixty of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees,

and agents; administration and enforcement expenses.

1 (a) The alcohol beverage control commissioner des-
2 cribed 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 eleven special
42 investigators who shall be nonclassified 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.

**§11-16-9. Amount of license tax; Class A and Class B
retail dealers; purchase and sale of nonin-
toxicating beer permitted; distributors;
brewers; brewpubs.**

1 (a) There is hereby levied and imposed an annual
2 license tax upon all dealers in and of nonintoxicating
3 beer as defined by this article, which license period shall
4 begin on the first day of July of each year and end on
5 the thirtieth day of June of the following year, and, if
6 granted for a less period the same shall be computed
7 semiannually in proportion to the remainder of the fiscal
8 year as follows:

9 (1) Retail dealers shall be divided into two classes,
10 Class A and Class B. In the case of a Class A retail
11 dealer the license fee shall be one hundred fifty dollars
12 for each place of business; the license fee for social,
13 fraternal or private clubs not operating for profit, and
14 having been in continuous operation for two years or
15 more immediately preceding the date of application,
16 shall be one hundred fifty dollars: *Provided*, That

17 railroads operating in this state may dispense nonintox-
18 icating beer upon payment of an annual license tax of
19 ten dollars for each dining, club or buffet car in which
20 the same is dispensed.

21 Class A licenses issued for railroad dining, club or
22 buffet cars, as herein provided, shall authorize the
23 licensee to sell nonintoxicating beer at retail for
24 consumption only on the licensed premises where sold.
25 All other Class A licenses shall authorize the licensee to
26 sell nonintoxicating beer at retail for consumption on or
27 off the licensed premises.

28 In the case of a Class B retailer, the fee for a Class
29 B license authorizing the sale of both chilled and
30 unchilled beer shall be one hundred fifty dollars for each
31 place of business. A Class B license shall authorize the
32 licensee to sell nonintoxicating beer at retail in bottles,
33 cans or other sealed containers only, and only for
34 consumption off the licensed premises. Sales under this
35 license to any person at any one time must be in less
36 quantities than five gallons: *Provided*, That a Class B
37 retailer may sell to a consumer, for personal use and not
38 for resale, draught beer in quantities of one-eighth, one-
39 fourth and one-half barrels in the original containers.
40 Such license may be issued only to the proprietor or
41 owner of a grocery store. For the purpose of this article
42 the term "grocery store" means and includes any retail
43 establishment commonly known as a grocery store or
44 delicatessen and caterer or party supply store, where
45 food or food products are sold for consumption off the
46 premises, and shall include and mean a separate and
47 segregated portion of any other retail store which is
48 dedicated solely to the sale of food, food products and
49 supplies for the table for consumption off the premises.
50 The commissioner may promulgate legislative rules
51 pursuant to chapter twenty-nine-a of this code necessary
52 to carry this provision into effect. Caterers or party
53 supply stores will be required to purchase the appropri-
54 ate licenses from the alcohol beverage control
55 administration.

56 (2) In the case of distributors, the license fee shall be
57 one thousand dollars for each place of business.

58 (3) In the case of a brewer with its principal place of
59 business located in this state, the license fee shall be one
60 thousand five hundred dollars for each place of
61 manufacture.

62 (4) In the case of a brewpub, the license fee shall be
63 one thousand dollars for each place of manufacture.

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

**§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 division 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 sixteen 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 registra-
39 tion plates issued to counties, municipalities and other
40 governmental agencies authorized to receive colored
41 plates hereunder shall be affixed to both the front and
42 rear of such vehicles: *Provided*, That upon application
43 and payment of fees, the commissioner is hereby
44 authorized to issue a maximum of five Class A license
45 plates per applicant to be used by county sheriffs and
46 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. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

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

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

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

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

33 “Licensee” means the holder of a license granted
34 under the provisions of this article.

35 “Private wine restaurant” means a restaurant which:
36 (1) Is a partnership, limited partnership, corporation,
37 unincorporated association or other business entity
38 which has as its principal purpose the business of
39 serving meals on its premises to its members and their
40 guests; (2) is licensed under the provisions of this article
41 as to all of its premises or as to a separate segregated
42 portion of its premises to serve wine to its members and
43 their guests when such sale accompanies the serving of
44 food or meals; and (3) admits only duly elected and
45 approved dues paying members and their guests while
46 in the company of a member, and does not admit the
47 general public.

48 “Retailer” means any person licensed to sell wine at
49 retail to the public at his established place of business
50 for off-premises consumption and who is licensed to do
51 so under authority of this article.

52 “Supplier” means any manufacturer, producer,
53 processor, distributor or supplier of wine who sells or
54 offers to sell or solicits or negotiates the sale of wine to
55 any licensed West Virginia distributor.

56 “Tax” includes within its meaning interest, additions
57 to tax and penalties.

58 “Taxpayer” means any person liable for any tax,
59 interest, additions to tax or penalty under the provisions
60 of this article and any person claiming a refund of tax.

61 “Varietal wine” means any wine labeled according to
62 the grape variety from which such wine is made.

63 “Vintage wine” or “vintage-dated wine” means wines
64 from which the grapes used to produce such wine are
65 harvested during a particular year or wines produced
66 from the grapes of a particular harvest in a particular
67 region of production.

68 “Wine” means any alcoholic beverage obtained by the
69 natural fermentation of the natural content of grapes,
70 other fruits or honey or other agricultural products
71 containing sugar and to which no alcohol has been added
72 and shall include table wine, and shall exclude fortified
73 wine and shall also exclude any product defined as or

74 embraced within the definition of nonintoxicating beer
75 under the provisions of article sixteen, chapter eleven of
76 this code.

77 “Wine specialty shop” means a retailer who shall deal
78 principally in the sale of table wine, certain fortified
79 wines, wine accessories and food or foodstuffs normally
80 associated with wine and (1) who shall maintain a
81 representative number of such wines for sale in his
82 inventory which are designated by label as varietal
83 wine, vintage, generic and/or according to region of
84 production and the inventory shall contain not less than
85 fifteen percent vintage or vintage-dated wine by actual
86 bottle count and (2) who, any other provisions of this
87 code to the contrary notwithstanding, may maintain an
88 inventory of port, sherry and madiera wines having an
89 alcoholic content of not more than twenty-two percent
90 alcohol by volume and which have been matured in
91 wooden barrels or casks.

§60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section
2 five-a, article one of this chapter, no person may engage
3 in business in the capacity of a distributor, retailer or
4 private wine restaurant without first obtaining a license
5 from the commissioner, nor shall a person continue to
6 engage in any such activity after his license has expired,
7 been suspended or revoked. No person may be licensed
8 simultaneously as a distributor and a retailer, as a
9 distributor and a private wine restaurant, or as a
10 retailer and a private wine restaurant.

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

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

20 (2) One hundred fifty dollars per year for a retailer’s

21 license.

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

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

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

31 (6) Twenty-five dollars per year for a West Virginia
32 wine retailers license, and each separate retail outlet
33 from which a West Virginia wine retailer sells West
34 Virginia wine shall be separately licensed and there
35 shall be collected with respect to each such location the
36 annual license fee of twenty-five dollars as herein
37 provided. The holder of such a license may sell no wines
38 except those produced by West Virginia farm wineries
39 as defined by section five-a, article one of this chapter.
40 Except for the amount of the license fee and the
41 restriction to sales of West Virginia wines, a West
42 Virginia wine retailer is subject to all other provisions
43 of this article which are applicable to a retailer as
44 defined in section two of this article.

45 (c) The license period shall begin on the first day of
46 July of each year and end on the thirtieth day of June
47 of the following year, and if granted for a less period,
48 the same shall be computed semiannually in proportion
49 to the remainder of the fiscal year.

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

52 (e) No retailer may be licensed as a Class A retail
53 dealer in nonintoxicating beer as provided by article
54 sixteen, chapter eleven of this code: *Provided*, That a
55 delicatessen, a caterer or party supply store which is a
56 grocery store as defined in section two of this article and
57 which is licensed as a Class A retail dealer in nonintox-
58 icating beer may be a retailer under this article:
59 *Provided, however*, That any delicatessen, caterer or

60 party supply store licensed in both such capacities must
61 maintain average monthly sales exclusive of sales of
62 wine and nonintoxicating beer which exceed the average
63 monthly sales of nonintoxicating beer.

64 (f) A retailer under this article may also hold a wine
65 tasting license authorizing such retailer to serve
66 complimentary samples of wine in moderate quantities
67 for tasting. Such retailer shall organize a winetaster's
68 club, which has at least fifty duly elected or approved
69 dues paying members in good standing. Such club shall
70 meet on the retailer's premises not more than one time
71 per week and shall either meet at a time when the
72 premises are closed to the general public, or shall meet
73 in a separate segregated facility on the premises to
74 which the general public is not admitted. Attendance at
75 tastings shall be limited to duly elected or approved
76 dues paying members and their guests.

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

82 (h) The commissioner may issue a special license for
83 the retail sale of wine at any festival or fair which is
84 endorsed or sponsored by the governing body of a
85 municipality or a county commission. Such special
86 license shall be issued for a term of no longer than ten
87 consecutive days and the fee therefor shall be two
88 hundred fifty dollars regardless of the term of the
89 license unless the applicant is the manufacturer of said
90 wine on a farm winery as defined in section five-a,
91 article one of this chapter, in which event the fee shall
92 be twenty-five dollars. The application for such license
93 shall contain such information as the commissioner may
94 reasonably require and shall be submitted to the
95 commissioner at least thirty days prior to the first day
96 when wine is to be sold at such festival or fair. A farm
97 winery licensed under this subsection may exhibit,
98 conduct tastings, not to exceed a reasonable serving, and
99 may sell wine only for consumption off the premises of
100 such festival or fair. A special license issued other than

101 to a farm winery may be issued to a "wine club" as
102 defined hereinbelow. The festival or fair committee or
103 the governing body shall designate a person to organize
104 a club under a name which includes the name of the
105 festival or fair and the words "wine club". The license
106 shall be issued in the name of the wine club. A licensee
107 may not commence the sale of wine as provided for in
108 this subsection until the wine club has at least fifty dues
109 paying members who have been enrolled and to whom
110 membership cards have been issued. Thereafter, new
111 members may be enrolled and issued membership cards
112 at any time during the period for which the license is
113 issued. A wine club licensed under the provisions of this
114 subsection may sell wine only to its members, and in
115 portions not to exceed eight ounces per serving. Such
116 sales shall take place on premises or in an area cordoned
117 or segregated so as to be closed to the general public,
118 and the general public shall not be admitted to such
119 premises or area. A wine club licensee under the
120 provisions of this subsection shall be authorized to serve
121 complimentary samples of wine in moderate quantities
122 for tasting.

123 A license issued under the provisions of this subsection
124 and the licensee holding such license shall be subject to
125 all other provisions of this article and the rules,
126 regulations and orders of the commissioner relating to
127 such special license: *Provided*, That the commissioner
128 may by rule, regulation, or order provide for certain
129 waivers or exceptions with respect to such provisions,
130 rules, regulations, or orders as the circumstances of each
131 such festival or fair may require, including, without
132 limitation, the right to revoke or suspend any license
133 issued pursuant to this section prior to any notice or
134 hearing notwithstanding the provisions of section twelve
135 of this article: *Provided, however*, That under no
136 circumstances shall the provisions of subsection (c) or
137 (d), section twenty of this article be waived nor shall any
138 exception be granted with respect thereto.

139 A license issued under the provisions of this subsection
140 and the licensee holding such license shall not be subject
141 to the provisions of subsection (g) of this section.

142 (i) A license to sell wine granted to a private wine
143 restaurant under the provisions of this article entitles
144 the operator to sell and serve wine, for consumption on
145 the premises of the licensee, when such sale accompanies
146 the serving of food or a meal to its members and their
147 guests in accordance with the provisions of this article.
148 Such licensees are authorized to keep and maintain on
149 their premises a supply of wine in such quantities as
150 may be appropriate for the conduct of operations
151 thereof. Any sale of wine so made shall be subject to all
152 restrictions set forth in section twenty of this article. A
153 private wine restaurant may also be licensed as a Class
154 A retail dealer in nonintoxicating beer as provided by
155 article sixteen, chapter eleven of this code.

156 (j) With respect to subsections (h) and (i) of this
157 section, the commissioner shall promulgate legislative
158 rules in accordance with the provisions of chapter
159 twenty-nine-a of this code with regard to the form of the
160 applications, the suitability of both the applicant and
161 location of the licensed premises and such other
162 legislative rules deemed necessary to carry the provi-
163 sions of such subsections into effect.

164 (k) The commissioner shall promulgate legislative
165 rules in accordance with the provisions of chapter
166 twenty-nine-a of this code to allow restaurants to serve
167 West Virginia wine with meals, but not to sell the wine
168 by the bottle. Each restaurant so licensed shall be
169 charged a fee less than that charged for a wine license
170 to a retail outlet, such fees to be set forth in the
171 aforementioned rules promulgated pursuant to this
172 subsection.

173 (l) The commissioner shall establish guidelines to
174 permit West Virginia wines to be sold in state stores.

175 (m) Farm wineries as defined in section one-a of this
176 article may advertise off premises as provided in section
177 seven, article twenty-two of chapter seventeen and in
178 any other media, including, but not limited to, news-
179 paper, radio, television, magazines and direct mail
180 solicitation.

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

Somer Leck

Chairman Senate Committee

Ernest E. Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

Nassey E. Adams

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Walter B. Smith

President of the Senate

Robert C. Calhoun

Speaker of the House of Delegates

The within is approved this the 27th
day of *March*, 1992.

Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date

3/25/62

Time

11:40am