WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. H494

(By Delegate Cerro and Walker)

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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.

(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 hereunder; 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 administrators, 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 eleven special investigators who shall be nonclassified exempt employees 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 commissioner 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 administration enforcement, after the amount of such fees and other charges shall be certified by the court to the auditor.

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

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

(1) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a Class A retail dealer the license fee shall be one hundred fifty dollars for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, shall be one hundred fifty dollars: Provided, That
railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of ten dollars for each dining, club or buffet car in which the same is dispensed.

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

In the case of a Class B retailer, the fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be one hundred fifty dollars for each place of business. A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons: Provided, That a Class B retailer may sell to a consumer, for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article the term “grocery store” means and includes any retail establishment commonly known as a grocery store or delicatessen and caterer or party supply store, where food or food products are sold for consumption off the premises, and shall include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises.

The commissioner may promulgate legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry this provision into effect. Caterers or party supply stores will be required to purchase the appropriate licenses from the alcohol beverage control administration.

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

(4) In the case of a brewpub, the license fee shall be 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.

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 division of natural resources, not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal, and not to exceed sixteen 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. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

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

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

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

5 “Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer or party supply store, where food, food products and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wines) of not less than five hundred dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars. The term “grocery store” shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars.

6 “Licensee” means the holder of a license granted under the provisions of this article.
“Private wine restaurant” means a restaurant which:
(1) is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

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

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

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

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

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

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

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or
embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code.

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

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

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

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

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

(2) One hundred fifty dollars per year for a retailer's
(3) Fifty dollars per year for a wine tasting license.

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

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

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

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

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

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen, a caterer or party supply store which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen, caterer or
party supply store licensed in both such capacities must
maintain average monthly sales exclusive of sales of
wine and nonintoxicating beer which exceed the average
monthly sales of nonintoxicating beer.

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

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

(h) The commissioner may issue a special license for
the retail sale of wine at any festival or fair which is
endorsed or sponsored by the governing body of a
municipality or a county commission. Such special
license shall be issued for a term of no longer than ten
consecutive days and the fee therefor shall be two
hundred fifty dollars regardless of the term of the
license unless the applicant is the manufacturer of said
wine on a farm winery as defined in section five-a,
article one of this chapter, in which event the fee shall
be twenty-five dollars. The application for such license
shall contain such information as the commissioner may
reasonably require and shall be submitted to the
commissioner at least thirty days prior to the first day
when wine is to be sold at such festival or fair. A farm
winery licensed under this subsection may exhibit,
conduct tastings, not to exceed a reasonable serving, and
may sell wine only for consumption off the premises of
such festival or fair. A special license issued other than
to a farm winery may be issued to a “wine club” as defined hereinbelow. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club”. The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided for in this subsection until the wine club has at least fifty dues paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to such premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

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

A license issued under the provisions of this subsection and the licensee holding such license shall not be subject to the provisions of subsection (g) of this section.
(i) A license to sell wine granted to a private wine restaurant under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

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

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

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

(m) Farm wineries as defined in section one-a of this article may advertise off premises as provided in section seven, article twenty-two of chapter seventeen and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of , 1992.
PRESENTED TO THE
GOVERNOR
Date 3/25/63
Time 11:40 a.m.