WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

House Bill No. 3023

(By Delegates Doyle, Michael, Thompson, Pettit, Laird and Facemyer)

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Passed March 13, 1999

In Effect from Passage
AN ACT to repeal section thirty, article three-a, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, seven, eight, ten, ten-a, twelve, seventeen and twenty-nine of said article; to further amend said article by adding thereto four new sections, designated sections two-a, ten-b, ten-c and twenty-seven-a; and to amend and reenact section eleven, article seven of said chapter, all relating generally to the sale of liquor at retail; further legislative findings, declaration and purpose; operation of state store by commissioner in certain circumstances; revising definitions; appointments to retail liquor licensing board; powers and duties of commissioner; modification of market zones; increasing number of Class B licenses in a market zone in limited circumstances; limitation on number of licenses held; principal officers, partners and members of applicants for licenses; requirement that applicant for license hold federal license to sell liquor at wholesale; bidding procedures; preference for resident bidders; bids for licenses issued for ten period beginning the first day of July, two thousand and for every ten year period thereafter; determination of minimum bids; rejection of bids; notice to current licensee of highest bid in certain circumstances; issuance
of license to current licensee in certain circumstances; bid preference for current licensee; new bids for licenses in certain circumstances; unlawful inducement of another to refrain from bidding for a license or from operating an outlet; criminal and civil penalties; expiration of licenses for the period ending on the thirtieth day of June two thousand and for every ten year period thereafter; the annual license fees; the imposition of municipal licenses and fees on retail licensees; providing for payment by electronic funds transfer by retail licensees; surety bonds guaranteeing payment for liquor; establishing minimum prices for sale of liquor by retail licensees; revocation of license for failure to operate outlet; reduction of authorized outlets for failure to operate; issuance of Class B license in the stead of an unoperated Class A license outlet; restriction on bids; legislative rules governing determination of failure to operate; review of revocation or reduction; purchases of liquor from licensee where license revoked, expired or surrendered; and contracts for delivery of liquor by retail licensee.

Be it enacted by the Legislature of West Virginia:

That section thirty, article three-a, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three, four, five, six, seven, eight, ten, ten-a, twelve, seventeen and twenty-nine of said article be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections two-a, ten-b, ten-c and twenty-seven-a; and that section eleven, article seven of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-2a. Further legislative findings, declarations and purpose.

(a) In addition to the findings and declarations set forth in subsection (a), section two of this article, the Legislature hereby finds and declares that:

(1) The provisions of this article as enacted during the regular session of the Legislature in the year one thousand nine hundred ninety were intended to require that all licenses issued for the retail sale of liquor expire as of the first day of July, two
thousand, and that the issuance of retail licenses for the ten year period beginning the first day of July, two thousand, and for each ten-year period thereafter, be based on sealed competitive bids;

(2) It is the intention of the Legislature to provide that all retail licenses issued beginning the first day of July, two thousand, expire ten years from the date of issuance and that every ten years the issuance of retail licenses be based on competitive bids;

(3) The purposes set forth in subsection (b), section two of this article remain the purposes of the Legislature;

(4) Many of those persons who currently hold retail licenses have not only provided the services to the public contemplated by this article, but in many instances have provided employment and otherwise made substantial contributions to the economic and civic development of the communities in which they conduct business, and therefore, current licensees should be afforded special consideration if their bids for the licenses issued for the ten-year period beginning the first day of July, two thousand be unsuccessful;

(5) Those persons who are issued a retail license for the ten year period beginning on the first day of July, two thousand, and for any ten-year period thereafter should also be afforded special consideration if their bids for a retail license are unsuccessful; and

(6) Further statutory changes are desirable to effect the purposes set forth in subsection (b), section two of this article.

(b) It is, therefore, the further purposes of the Legislature in providing for the retail sale of liquor to:

(1) Require that all licenses issued for the ten-year period beginning the first day of July, two thousand, and for each ten year period thereafter be based on sealed competitive bids;

(2) Provide current licensees who, having bid in the manner required by the provisions of this article, fail to submit the highest bid for licenses issued for the ten-year period beginning
the first day of July, two thousand, and for each ten-year period
thereafter an additional opportunity to obtain the license; and
(3) Effect statutory changes to further the purposes pro-
vided in this section and section two of this article.

§60-3A-3. Sale of liquor by retail licensees permitted; cessation of
retail sale of liquor by state.

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

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

(c) No provision of this section shall prevent the commis-
sioner, with the consent of the board, from operating a state
liquor store in a market zone pursuant to the provisions of
article three of this chapter where there are no retail outlets in
operation, and the operation of any retail outlet in the market
zone is prevented by a matter in controversy pending judicial
adjudication or the licensee is unable or unwilling to open a
retail outlet. Provided, That, the board determines that the
resolution of the controversy will continue for such duration
that the opening of a state liquor store is necessary to meet
reasonable consumer concerns of availability of liquor.

§60-3A-4. Definitions.

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

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

(c) “Board” means the retail liquor licensing board created
by this article.
(d) "Class A retail license" means a retail license permitting the retail sale of liquor at more than one retail outlet.

(e) "Class B retail license" means a retail license permitting the sale of liquor at only one retail outlet.

(f) "Current licensee" means a person who holds a retail license at the time of the reenactment of this section in the year one thousand nine hundred ninety-nine or that person's successor or any person who holds a retail license when it expires at the end of a ten year period.

(g) "Designated areas" means one or more geographic areas within a market zone designated as such by the board.

(h) "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy making function.

(i) "Liquor" means alcoholic liquor as defined in section five, article one of this chapter, and also includes both wine and fortified wines as those terms are defined in section two, article eight of this chapter.

(j) "Market zone" means a geographic area designated as such by the board for the purpose of issuing retail licenses.

(k) "Person" means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(l) "Retail license" means a license issued under the provisions of this article permitting the sale of liquor at retail.

(m) "Retail licensee" means the holder of a retail license.

(n) "Retail outlet" means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.
§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.

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

(b) The provisions of this subsection apply to the three members appointed by the governor. They shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by Section 5, Article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall receive compensation of one hundred dollars per day for each day actually engaged in the performance of their duties as board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Appointments to fill vacancies made after the amendment to this section made in one thousand nine hundred ninety-nine shall be made to provide that after the next two appointments, and thereafter, there is a member from each of the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code.
(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

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

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

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

(b) The commissioner shall:

1. Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving applications;

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

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

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

5. Set minimum standards for retail outlets regarding the amount and variety of alcoholic liquors which they must offer for sale at each retail outlet;

6. Enforce the provisions of this article;

7. Impose civil penalties upon retail licensees;

8. Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of such retail licensee with the provisions of this article and any rules promulgated by the board or the commissioner pursuant to the provisions of this article; and
(9) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if such section was set forth in extenso herein.

(c) The board and the commissioner shall each:

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

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

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

(a) The market zones established by the board for the retail sale of liquor within this state under the enactment of this section in one thousand nine hundred ninety may not be modified by the board unless authorized by the Legislature. For each market zone established, the commissioner may issue one Class A retail license and one or more Class B retail licenses. Each Class A retail license shall permit the holder of the license to operate the number of retail outlets the board authorized for that market zone. The number of Class B retail licenses to be issued by the commissioner within each market zone shall not exceed fifty percent of the number of retail outlets authorized for the Class A retail license for that market zone, except as otherwise authorized by subsection (e) of this section or section twenty-seven-a of this article: Provided, That, except as authorized by subsection (e) of this section or section twenty-seven-a of this article, in a market zone where the number of retail outlets authorized under the Class A retail license is an
odd number, the number of Class B retail licenses which may
be issued in that market zone shall be rounded up to the next
highest whole number following that number which is equal to
fifty percent of the number of retail outlets authorized under the
Class A retail license.

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

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

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

(e) Notwithstanding any provision of subsection (a) or (c)
of this section, no later than sixty days prior to the receipt of the
bids described in section ten-b of this article, the board may
authorize the commissioner to issue an additional Class B
license in a market zone for the ten year period which begins
next following first day of July, where the board determines
that:

(1) Each outlet authorized to operate in the market zone has
been open and in operation for not less than one year;

(2) Changes in economic and demographic factors, includ­
ing substantial population increases within the market zone,
clearly demonstrate the need for an additional retail outlet or outlets within the market area to meet an increase in consumer demand; and

(3) The issuance of an additional Class B license in the market zone will not significantly impair the efforts to procure the revenues described in subsection (b) section ten-b of this article.

(f) The board shall establish the minimum bid for any additional Class B licenses authorized under subsection (e) of this section.

(g) No person may hold a combination of licenses that, in the aggregate, authorizes the operation of more than twenty-five percent of the total number of retail outlets authorized under the provisions of this article to operate in this state.

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

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

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

1 (2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner or member of the entity; a copy of the entity’s charter or other agreement under which the entity operates; and the names and residence addresses of any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership, or other interests in the applicant; and

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

(b) An applicant shall provide the commissioner any
additional information requested by the commissioner.

(c) Whenever a change occurs in any information provided
to the commissioner, the change shall immediately be reported
to the commissioner in the same manner as originally provided.

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

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

(2) Any executive officer or other principal officer, partner
or member of the applicant, or any person owning, directly or
indirectly, at least twenty percent of the outstanding stock,
partnership, or other interests in the applicant, has been
convicted in this state of any felony or other crime involving
moral turpitude or convicted of any felony in this or any other
state court or any federal court for a violation of any state or
federal liquor law.

(e) The commissioner shall not issue a retail license to an
applicant which does not hold a license issued pursuant to
federal law to sell liquor at wholesale.


(a) Except as provided in section ten-b of this article, bids
for licenses shall be governed by the provisions of this section.

(b) The issuance of retail licenses shall be based on sealed
competitive bids in accordance with the provisions of this
section. Bids for the issuance of retail licenses shall be obtained
by public notice published as a Class II-0 legal advertisement
in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for the publica-
tion shall be each market zone within which a retail outlet shall
be located. The second publication of the notice shall appear
more than sixty days next preceding the final day for submitting
bids.

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

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

(e) Prior to the issuance of the retail license to the success-
ful bidder, the bid price and the annual retail license fee, as
specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier’s check. All retail licenses shall be signed by the commissioner in the name of the state.

(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee, at the time specified by the commissioner, the bond provided for in section eleven of this article shall be forfeited and the bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for the retail license or reject all bids and start anew the bidding procedure for the retail license.

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

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

§60-3A-10b. Bidding procedure for licenses issued for the ten year period beginning July 1, 2000, and licenses issued for each ten year period thereafter.

(a) The issuance of Class A licenses and Class B licenses for the ten year period beginning the first day of July, two thousand, and for each ten year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of section ten of this article except as provided in this section.
(b) Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ten year period beginning the first day of July, two thousand, the board shall determine the minimum bid for each license based upon a review of the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the governor's official revenue estimates for fiscal year two thousand as presented to the regular session of the Legislature in the year one thousand nine hundred ninety-nine.

(c) Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ten year periods beginning the first day of July, two thousand ten and the first day of July every ten years thereafter, the board shall determine the minimum bid for each license based upon a review of the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the governor’s official revenue estimates for the fiscal year preceding the expiration of the retail licenses.

(d) All bids for a retail license for the ten year period beginning the first day of July, two thousand, or for any ten year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending the thirtieth day of June, two thousand, or for any ten year period thereafter, on the thirtieth day of June preceding the expiration of the license. If the current licensee holding the same retail license at the time of submission of the bid for the period ending the thirtieth day of June, two thousand, or for any ten year period thereafter, on the thirtieth day of June preceding the expiration of the retail license, submitted a bid that was not less than the minimum bid and is, after considering any preference applicable under the provisions of
section ten-a of this article, an unsuccessful bidder for the license for the period beginning the first day of July, two thousand, or for any ten year period thereafter, on the first day of July when the retail license expires, the commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of subsection (e) of this section, and upon compliance with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten year period beginning the first day of July, two thousand, or for any ten year period thereafter, shall be issued to the current licensee. If, within the time determined by the commissioner, the current licensee pays the amount to the commissioner and complies with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten year period beginning the first day of July, two thousand, or for any ten year period thereafter, shall be issued to the current licensee.

(e) The board shall, in determining the amount a current licensee who is an unsuccessful bidder shall pay as described in subsection (d) of this section, afford the unsuccessful bidder a preference. If the unsuccessful bidder is a West Virginia resident as defined in section ten-a of this article, the board shall afford the unsuccessful bidder a five percent preference in addition to the five percent preference afford under section ten-a of this article. If the unsuccessful bidder is not a West Virginia resident, the board shall afford the unsuccessful bidder a five percent preference. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price: Provided, that under no circumstances may the preference bring the price of the bid below the minimum bid established by the board: Provided, however That a current licensee who is not operating any of the retail outlets for which he or she is authorized under the license is not eligible for the preference provided for under this section.

(f) In the event all bids submitted for a license fail to meet the minimum bid amount for the license as determined by the board, the board may offer the license for bid again after it determines a new minimum bid amount for the license.
§60-3A-10c. Criminal penalties for unlawful inducement.

(a) Any person who gives another person any thing of value to induce the other to refrain from bidding for a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars, and, in addition, shall be subject to a civil penalty payable to the commissioner of not more than one million dollars.

(b) Any person who gives a person any thing of value to induce the other to refrain from operating an outlet authorized under a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars, and, in addition, shall be subject to a civil penalty payable to the commissioner of not more than one million dollars.

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

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

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

(c) No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.
(d) All retail licenses issued or renewed under the provisions of this article for the period ending the thirtieth day of June, two thousand or on the thirtieth day of June for any ten year period thereafter expire and are of no further force or effect as of the first day of July, in the year two thousand or as of the first day of July every ten years thereafter.

(e) Notwithstanding any provision of section eighteen, article four of this chapter to the contrary, a municipality may invoke the authority granted by section four, article thirteen, chapter eight of this code to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in subsection (a) of this section.

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

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon 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) 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. 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
the liquor: Provided, That a retail licensee shall purchase wine
from a wine distributor 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, That the commis-
sioner, 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.

(d) The sale of liquor by the commissioner to retail licens-
ees shall be paid by electronic funds transfer which shall be
initiated by the commissioner on the business day following the
retail licensees order or by money order, certified check or
cashier's check which shall be received by the commissioner at
least twenty-four hours prior to the shipping of the alcoholic
liquors: Provided, That if a retail licensee posts with the
commissioner an irrevocable letter of credit or bond with surety
acceptable to the commissioner 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.

(e)(1) A retail licensee may not sell liquor to persons
licensed under the provisions of article seven of this chapter at
less than one hundred ten percent of the retail licensee's cost as
defined in section six, article eleven-a, chapter forty-seven of
this code.

(2) A retail licensee may not sell liquor to the general
public at less than one hundred ten percent of the retail
licensee's cost as defined in section six, article eleven-a,
chapter forty-seven of this code.

§60-3A-27a. Revocation of license or reduction of authority to
operate retail outlet for failure to operate retail
outlet.

(a)(1) The commissioner may revoke a Class A retail
license if the licensee fails to operate at least one of the retail
outlets authorized under the license. The commissioner may
revoke a Class B retail license if the licensee fails to operate the retail outlet authorized under the license.

(2) The commissioner may not accept the bid of a person who has had a license revoked pursuant to subdivision (1) of this subsection when the license is offered for bid following the revocation.

(b)(1) Where a person operates at least one of the retail outlets authorized under a Class A license, but fails to operate the full number of retail outlets authorized under the license, the commissioner may reduce the number of retail outlets the person is authorized to operate under the license by the number that is not being operated.

(2) Notwithstanding any provision of section seven of this article to the contrary, the board may authorize the commissioner to issue, subject to the bid requirements of section ten of this article, a Class B license in the stead of each retail outlet for which authority to operate under a Class A license has been reduced under subdivision (1) of this subsection.

(3) The commissioner may not accept the bid of a person who has had the number of retail outlets authorized under a license reduced pursuant to subdivision (1) of this subsection for any Class B license issued in the stead of a retail outlet previously authorized under the reduced license.

(c) The board shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code prescribing the criteria under which the commissioner is to determine whether a retail licensee has failed to operate an outlet.

(d) A revocation or reduction under this section is subject to the provisions for notice, hearing and review prescribed in section twenty-eight of this article.

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

In the event of the revocation, expiration or surrender of any retail license in accordance with the provisions of this article, the commissioner may, in his or her discretion, pur-
chase, or authorize another person to purchase, all or any
portion of the liquor inventory of the retail licensee. If the
commissioner elects to purchase, or authorizes another person
to purchase, the inventory or any portion of the inventory, the
retail licensee shall sell the inventory as directed by, and upon
terms determined by, the commissioner.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

(a)(1) All licensees shall purchase all alcoholic liquors sold
by them from the West Virginia alcohol beverage control
commissioner at prices established by the commissioner for
sales of the alcoholic liquors to the public generally or from any
retail licensee licensed under the provisions of article three-a of
this chapter, except that the licensees may purchase those wines
permitted to be sold at retail pursuant to article eight of this
chapter from those distributors licensed pursuant to said article
at the same prices the distributors sell the wines to retailers
licensed pursuant to said article.

(2) A licensee may by contract approved by the commis-
sioner receive deliveries of alcoholic liquor from a retail liquor
store, and the provisions of sections twelve and thirteen, article
six of this chapter shall not apply to the transportation of that
alcoholic liquor.

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

(c) Notwithstanding the provisions of section thirty, article
fifteen, chapter eleven of this code to the contrary, the amount
of the sales taxes collected by the tax commissioner shall be
deposited in a revolving fund account in the state treasurer’s
office, designated the “drunk driving prevention fund”, and
administered by the commission on drunk driving prevention,
subject to appropriations by the Legislature.
That 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 approved this the 3/s

day of March, 1999.

Governor