

HB 3023

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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



ENROLLED

House Bill No. 3023

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



Passed March 13, 1999

In Effect from Passage

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OFFICE OF THE CLERK
HOUSE OF DELEGATES
STATE OF WEST VIRGINIA

ENROLLED
H. B. 3023

(BY DELEGATES DOYLE, MICHAEL, THOMPSON,
PETTIT, LAIRD AND FACEMYER)

[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.

- 1 (a) In addition to the findings and declarations set forth in
- 2 subsection (a), section two of this article, the Legislature hereby
- 3 finds and declares that:
- 4 (1) The provisions of this article as enacted during the
- 5 regular session of the Legislature in the year one thousand nine
- 6 hundred ninety were intended to require that all licenses issued
- 7 for the retail sale of liquor expire as of the first day of July, two

8 thousand, and that the issuance of retail licenses for the ten year
9 period beginning the first day of July, two thousand, and for
10 each ten-year period thereafter, be based on sealed competitive
11 bids;

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

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

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

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

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

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

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

40 (2) Provide current licensees who, having bid in the manner
41 required by the provisions of this article, fail to submit the
42 highest bid for licenses issued for the ten-year period beginning

43 the first day of July, two thousand, and for each ten-year period
44 thereafter an additional opportunity to obtain the license; and
45 (3) Effect statutory changes to further the purposes pro-
46 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.

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

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

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

§60-3A-4. Definitions.

1 (a) "Applicant" means any person who bids for a retail
2 license, or who seeks the commissioner's approval to purchase
3 or otherwise acquire a retail license from a retail licensee, in
4 accordance with the provisions of this article.

5 (b) "Application" means the form prescribed by the
6 commissioner which must be filed with the commissioner by
7 any person bidding for a retail license.

8 (c) "Board" means the retail liquor licensing board created
9 by this article.

10 (d) "Class A retail license" means a retail license permitting
11 the retail sale of liquor at more than one retail outlet.

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

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

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

21 (h) "Executive officer" means the president or other
22 principal officer, partner or member of an applicant or retail
23 licensee, any vice president or other principal officer, partner or
24 member of an applicant or retail licensee in charge of a princi-
25 pal business unit or division, or any other officer, partner or
26 member of an applicant or retail licensee who performs a policy
27 making function.

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

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

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

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

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

41 (n) "Retail outlet" means a specific location where liquor
42 may be lawfully sold by a retail licensee under the provisions
43 of this article.

§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.

1 (a) There is hereby continued the state retail liquor licens-
2 ing board which shall be composed of five members, three of
3 whom shall be appointed by the governor by and with the
4 advice and consent of the senate, one of whom shall be the
5 secretary of tax and revenue, and one of whom shall be the
6 commissioner. The secretary of tax and revenue and the
7 commissioner shall serve as the chairman and secretary,
8 respectively, of the board. No more than two of the three
9 members appointed by the governor shall be of the same
10 political party. No member of the board may hold a retail
11 license or have any financial interest, directly or indirectly, in
12 any retail licensee.

13 (b) The provisions of this subsection apply to the three
14 members appointed by the governor. They shall be appointed
15 for overlapping terms of three years each and until their
16 respective successors have been appointed and have qualified.
17 Members may be reappointed for any number of terms. Before
18 entering upon the performance of his or her duties, each
19 member shall take and subscribe to the oath required by Section
20 5, Article IV of the constitution of this state. Vacancies shall be
21 filled by appointment by the governor for the unexpired term of
22 the member whose office is vacant and the appointment shall be
23 made within sixty days of the occurrence of the vacancy. Any
24 member may be removed by the governor in case of incompe-
25 tency, neglect of duty, gross immorality or malfeasance in
26 office. Members shall receive compensation of one hundred
27 dollars per day for each day actually engaged in the perfor-
28 mance of their duties as board members, and in addition shall
29 be reimbursed for all reasonable and necessary expenses
30 actually incurred in the performance of their duties. Appoint-
31 ments to fill vacancies made after the amendment to this section
32 made in one thousand nine hundred ninety-nine shall be made
33 to provide that after the next two appointments, and thereafter,
34 there is a member from each of the congressional districts of
35 this state as delineated in accordance with section three, article
36 two, chapter one of this code.

37 (c) A majority of the members of the board constitutes a
38 quorum and meetings shall be held at the call of the chairman.

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

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

1 (a) The board shall create, based on economic and demo-
2 graphic factors, market zones within the state for the issuance
3 of Class A and Class B retail licenses, and, if deemed necessary
4 or desirable by the board, to create one or more designated
5 areas within such market zones for the issuance of Class B
6 retail licenses.

7 (b) The commissioner shall:

8 (1) Prescribe application forms for persons desiring to
9 acquire retail licenses and adopt an orderly procedure and
10 timetable for investigating, processing and approving applica-
11 tions;

12 (2) Develop a form of retail license to be issued to each
13 retail licensee under the provisions of this article;

14 (3) Disseminate to the public information relating to the
15 issuance of retail licenses;

16 (4) Promulgate standards for advertising the sale, availabil-
17 ity, price and selection of liquor;

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

21 (6) Enforce the provisions of this article;

22 (7) Impose civil penalties upon retail licensees;

23 (8) Enter the retail outlet of any retail licensee at reasonable
24 times for the purpose of inspecting the same, and determining
25 the compliance of such retail licensee with the provisions of
26 this article and any rules promulgated by the board or the
27 commissioner pursuant to the provisions of this article; and

28 (9) Issue subpoenas and subpoenas duces tecum for the
29 purpose of conducting hearings under the provisions of section
30 twenty-six or section twenty-eight of this article, which
31 subpoenas and subpoenas duces tecum shall be issued in the
32 time, for the fees, and shall be enforced in the manner specified
33 in section one, article five, chapter twenty-nine-a of this code
34 with like effect as if such section was set forth in extenso
35 herein.

36 (c) The board and the commissioner shall each:

37 (1) Engage accounting, legal and other necessary profes-
38 sional consultants to assist them in carrying out their respective
39 duties under this article; and

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

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

1 (a) The market zones established by the board for the retail
2 sale of liquor within this state under the enactment of this
3 section in one thousand nine hundred ninety may not be
4 modified by the board unless authorized by the Legislature. For
5 each market zone established, the commissioner may issue one
6 Class A retail license and one or more Class B retail licenses.
7 Each Class A retail license shall permit the holder of the license
8 to operate the number of retail outlets the board authorized for
9 that market zone. The number of Class B retail licenses to be
10 issued by the commissioner within each market zone shall not
11 exceed fifty percent of the number of retail outlets authorized
12 for the Class A retail license for that market zone, except as
13 otherwise authorized by subsection (e) of this section or section
14 twenty-seven-a of this article: *Provided*, That, except as
15 authorized by subsection (e) of this section or section twenty-
16 seven-a of this article, in a market zone where the number of
17 retail outlets authorized under the Class A retail license is an

18 odd number, the number of Class B retail licenses which may
19 be issued in that market zone shall be rounded up to the next
20 highest whole number following that number which is equal to
21 fifty percent of the number of retail outlets authorized under the
22 Class A retail license.

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

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

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

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

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

53 (2) Changes in economic and demographic factors, includ-
54 ing substantial population increases within the market zone,

55 clearly demonstrate the need for an additional retail outlet or
56 outlets within the market area to meet an increase in consumer
57 demand; and

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

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

65 (g) No person may hold a combination of licenses that, in
66 the aggregate, authorizes the operation of more than twenty-five
67 percent of the total number of retail outlets authorized under the
68 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
2 for a retail license, each applicant shall file an application with
3 the commissioner, stating under oath the following:

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

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

15 (3) That the applicant has never been convicted in this state
16 or any other state of any felony or other crime involving moral
17 turpitude or convicted of any felony in this or any other state
18 court or any federal court for a violation of any state or federal
19 liquor law, and if the applicant is other than an individual, that

20 none of its executive officers other principal officers, partners
21 or members, or any person owning, directly or indirectly, at
22 least twenty percent of the outstanding stock, partnership, or
23 other interests in the applicant, has been convicted.

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

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

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

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

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

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

§60-3A-10. Bidding procedure.

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

3 (b) The issuance of retail licenses shall be based on sealed
4 competitive bids in accordance with the provisions of this
5 section. Bids for the issuance of retail licenses shall be obtained

6 by public notice published as a Class II-0 legal advertisement
7 in compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for the publica-
9 tion shall be each market zone within which a retail outlet shall
10 be located. The second publication of the notice shall appear
11 more than sixty days next preceding the final day for submitting
12 bids.

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

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

42 (e) Prior to the issuance of the retail license to the success-
43 ful bidder, the bid price and the annual retail license fee, as

44 specified in section twelve of this article, shall be paid to the
45 commissioner by money order, certified check or cashier's
46 check. All retail licenses shall be signed by the commissioner
47 in the name of the state.

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

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

1 In determining the highest bidder for purposes of section
2 ten of this article, the board shall afford a five percent prefer-
3 ence for West Virginia resident bidders, which shall be com-
4 puted by adding five percent of the bid price to the bid price
5 submitted by each resident bidder. For purposes of this section
6 a bidder shall be considered to be a West Virginia resident if the
7 bidder (1) has resided in this state for at least four years
8 immediately prior to the date on which the bid is opened; or, if
9 the bidder is is an applicant other than an individual, has had its
10 headquarters or principal place of business in this state for at
11 least four years immediately prior to that date and (2) meets the
12 requirements set forth in section forty-four, article three,
13 chapter five-a of this code relating to a residency of vendors,
14 except for the requirement of having paid business and occupa-
15 tion 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.**

1 (a) The issuance of Class A licenses and Class B licenses
2 for the ten year period beginning the first day of July, two
3 thousand, and for each ten year period thereafter, shall be based
4 upon sealed competitive bid in accordance with the provisions
5 of section ten of this article except as provided in this section.

6 (b) Prior to accepting bids for Class A licenses and Class B
7 licenses to be issued for the ten year period beginning the first
8 day of July, two thousand, the board shall determine the
9 minimum bid for each license based upon a review of the sales
10 at each retail outlet permitted to operate under the license and
11 such other factors as the board may determine to generate the
12 revenues from liquor license renewal projected by the gover-
13 nor's official revenue estimates for fiscal year two thousand as
14 presented to the regular session of the Legislature in the year
15 one thousand nine hundred ninety-nine.

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

26 (d) All bids for a retail license for the ten year period
27 beginning the first day of July, two thousand, or for any ten
28 year period thereafter may be rejected by the board if the board
29 determines that the highest bid fails to meet the minimum bid.
30 The board may also reject any or all bids for a market zone
31 where, in the aggregate, the bids for all of the retail licenses in
32 the market zone fail to meet the minimum aggregate bid for that
33 market zone. Where the board determines the highest bid meets
34 or exceeds the minimum bid, the board shall determine
35 whether, at the time of the bid, the same retail license was held
36 for the period ending the thirtieth day of June, two thousand, or
37 for any ten year period thereafter, on the thirtieth day of June
38 preceding the expiration of the license. If the current licensee
39 holding the same retail license at the time of submission of the
40 bid for the period ending the thirtieth day of June, two thou-
41 sand, or for any ten year period thereafter, on the thirtieth day
42 of June preceding the expiration of the retail license, submitted
43 a bid that was not less than the minimum bid and is, after
44 considering any preference applicable under the provisions of

45 section ten-a of this article, an unsuccessful bidder for the
46 license for the period beginning the first day of July, two
47 thousand, or for any ten year period thereafter, on the first day
48 of July when the retail license expires, the commissioner shall
49 notify the person that upon paying the amount of the highest
50 bid, subject to the provisions of subsection (e) of this section,
51 and upon compliance with all other requirements imposed by
52 the provisions of this article for the issuance of the license, the
53 retail license for the ten year period beginning the first day of
54 July, two thousand, or for any ten year period thereafter, shall
55 be issued to the current licensee. If, within the time determined
56 by the commissioner, the current licensee pays the amount to
57 the commissioner and complies with all other requirements
58 imposed by the provisions of this article for the issuance of the
59 license, the retail license for the ten year period beginning the
60 first day of July, two thousand, or for any ten year period
61 thereafter, shall be issued to the current licensee.

62 (e) The board shall, in determining the amount a current
63 licensee who is an unsuccessful bidder shall pay as described in
64 subsection (d) of this section, afford the unsuccessful bidder a
65 preference. If the unsuccessful bidder is a West Virginia
66 resident as defined in section ten-a of this article, the board
67 shall afford the unsuccessful bidder a five percent preference in
68 addition to the five percent preference afford under section ten-
69 a of this article. If the unsuccessful bidder is not a West
70 Virginia resident, the board shall afford the unsuccessful bidder
71 a five percent preference. The preference shall be computed by
72 subtracting the preference percentage of the highest bid price
73 from the highest bid price: *Provided*, that under no circum-
74 stances may the preference bring the price of the bid below the
75 minimum bid established by the board: *Provided, however* That
76 a current licensee who is not operating any of the retail outlets
77 for which he or she is authorized under the license is not
78 eligible for the preference provided for under this section.

79 (f) In the event all bids submitted for a license fail to meet
80 the minimum bid amount for the license as determined by the
81 board, the board may offer the license for bid again after it
82 determines a new minimum bid amount for the license.

§60-3A-10c. Criminal penalties for unlawful inducement.

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

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

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

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

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

19 (c) No person may sell liquor at any retail outlet if the retail
20 license applicable to the outlet has been suspended or revoked,
21 or has expired.

22 (d) All retail licenses issued or renewed under the provi-
23 sions of this article for the period ending the thirtieth day of
24 June, two thousand or on the thirtieth day of June for any ten
25 year period thereafter expire and are of no further force or
26 effect as of the first day of July, in the year two thousand or as
27 of the first day of July every ten years thereafter.

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

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

1 (a) The commissioner shall fix wholesale prices for the sale
2 of liquor, other than wine, to retail licensees. The commissioner
3 shall sell liquor, other than wine, to retail licensees according
4 to a uniform pricing schedule. The commissioner shall obtain
5 if possible, upon request, any liquor requested by a retail
6 licensee.

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

14 (c) The commissioner shall specify the maximum wholesale
15 markup percentage which may be applied to the prices paid by
16 the commissioner for all liquor, other than wine, in order to
17 determine the prices at which all liquor, other than wine, will be
18 sold to retail licensees. A retail licensee shall purchase all liquor,
19 other than wine, for resale in this state only from the commis-
20 sioner, and the provisions of sections twelve and thirteen,

21 article six of this chapter shall not apply to the transportation of
22 the liquor: *Provided*, That a retail licensee shall purchase wine
23 from a wine distributor who is duly licensed under article eight
24 of this chapter. All liquor, other than wine, purchased by retail
25 licensees shall be stored in the state at the retail outlet or outlets
26 operated by the retail licensee: *Provided*, That the commis-
27 sioner, in his or her discretion, may upon written request permit
28 a retail licensee to store liquor at a site other than the retail
29 outlet or outlets.

30 (d) The sale of liquor by the commissioner to retail licens-
31 ees shall be paid by electronic funds transfer which shall be
32 initiated by the commissioner on the business day following the
33 retail licensees order or by money order, certified check or
34 cashier's check which shall be received by the commissioner at
35 least twenty-four hours prior to the shipping of the alcoholic
36 liquors: *Provided*, That if a retail licensee posts with the
37 commissioner an irrevocable letter of credit or bond with surety
38 acceptable to the commissioner from a financial institution
39 acceptable to the commissioner guaranteeing payment of
40 checks, then the commissioner may accept the retail licensee's
41 checks in an amount up to the amount of the letter of credit.

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

47 (2) A retail licensee may not sell liquor to the general
48 public at less than one hundred ten percent of the retail
49 licensee's cost as defined in section six, article eleven-a,
50 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.**

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

4 revoke a Class B retail license if the licensee fails to operate the
5 retail outlet authorized under the license.

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

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

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

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

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

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

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

1 In the event of the revocation, expiration or surrender of
2 any retail license in accordance with the provisions of this
3 article, the commissioner may, in his or her discretion, pur-

4 chase, or authorize another person to purchase, all or any
5 portion of the liquor inventory of the retail licensee. If the
6 commissioner elects to purchase, or authorizes another person
7 to purchase, the inventory or any portion of the inventory, the
8 retail licensee shall sell the inventory as directed by, and upon
9 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; excep-
tions.**

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

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

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

21 (c) Notwithstanding the provisions of section thirty, article
22 fifteen, chapter eleven of this code to the contrary, the amount
23 of the sales taxes collected by the tax commissioner shall be
24 deposited in a revolving fund account in the state treasurer's
25 office, designated the "drunk driving prevention fund", and
26 administered by the commission on drunk driving prevention,
27 subject to appropriations by the Legislature.

PRESENTED TO THE

GOVERNOR

Date 3/26/99

Time 2:48pm