WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

House Bill No. 4368
(By Delegates Amores, Palumbo, Brown and Schadler)

Passed March 10, 2006
In Effect Ninety Days from Passage
AN ACT to amend and reenact §60-8-18 of the Code of West Virginia, 1931, as amended, relating to the alleged violations of Alcohol Beverage Control Administration (ABCA) rules, orders and related code provisions by persons and entities holding licenses to sell or serve wine; clarifying the code provisions to clearly provide for the investigation of licensee’s alleged violation of rules or orders issued by the ABCA Commissioner; and providing expanded alternative sanction options to the ABCC Commissioner for certain violations.

Be it enacted by the Legislature of West Virginia:

That §60-8-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

§60-8-18. Revocation, suspension and other sanctions which may be imposed by the Commissioner upon the licensee; procedure upon refusal, revocation, suspension or other sanction.
(a) The Commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule promulgated or any order issued by the Commissioner has been violated by any licensee. After investigation, the Commissioner may impose penalties and sanctions as set forth below.

(1) If the Commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the Commissioner, or if the Commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the Commissioner may:

(A) Revoke the licensee’s license;

(B) Suspend the licensee’s license for a period determined by the Commissioner not to exceed twelve months; or

(C) Place the licensee on probation for a period not to exceed twelve months; and,

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

(2) If the Commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the Commissioner, the Commissioner shall revoke the licensee’s license.

(b) If a distributor fails or refuses to keep in effect the bond required by section twenty-nine of this article, the Commissioner shall automatically suspend the distributor’s license until the bond required by section twenty is furnished to the Commissioner, at which time the Commissioner shall vacate the suspension.
(c) Whenever the Commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation or imposes a monetary penalty, he or she shall enter an order to that effect, and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(d) Any applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the Commissioner, a written demand for hearing is served upon the Commissioner within ten days following the receipt of the Commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the Commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of subsection (b) of this section. The person demanding a hearing shall give security for the cost of the hearing in a form and amount as the Commissioner may reasonably require. If the person demanding the hearing does not substantially prevail in such hearing or upon judicial review thereof as provided in subsections (g) and (h) of this section, then the costs of the hearing shall be assessed against him or her by the Commissioner and may be collected by an action at law or other proper remedy.

(e) Upon receipt of a timely served written demand for a hearing, the Commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time and place of the hearing, which shall be held within thirty days after receipt of the demand. At the hearing the Commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying or vacating the order. Any such order is final unless vacated or modified upon judicial review thereof.
(f) The hearing and the administrative procedure prior to, during and following the hearing shall be governed by and in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(g) Any applicant or licensee adversely affected by an order entered following a hearing has the right of judicial review of the order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(h) The judgment of a circuit court reviewing the order of the Commissioner is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(i) Legal counsel and services for the Commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.
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.

In effect ninety days 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 4th.

day of April 2006.

Governor