

SB 712 S

FILED

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WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2007

ENROLLED

REVISED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 712

(SENATORS KESSLER AND MCKENZIE, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended; to amend and reenact §17-22-7 of said code; to amend and reenact §60-1-5a of said code; to amend and reenact §60-3A-18 of said code; to amend and reenact §60-4-2, §60-4-3, §60-4-3a, §60-4-15 and §60-4-22 of said code; to amend said code by adding thereto a new section, designated §60-4-3b; to amend and reenact §60-6-1 and §60-6-2 of said code; to amend and reenact §60-8-1, §60-8-2, §60-8-3, §60-8-4, §60-8-5, §60-8-6, §60-8-7, §60-8-16, §60-8-18, §60-8-19, §60-8-20, §60-8-23, §60-8-24, §60-8-25, §60-8-26, §60-8-28, §60-8-29, §60-8-30, §60-8-31, §60-8-32 and §60-8-34 of said code; and to

amend said code by adding thereto a new section, designated §60-8-6a, all relating to alcohol beverage regulation generally; regulation of wine; requiring farm wineries to pay taxes and license fees, equalizing wineries with distilleries and farm wineries with mini-distilleries as to signage, licensing, license fees, sales and the use of suppliers and distributors; providing licensing procedure for wineries, farm wineries, suppliers or retailers to sell and direct ship wine for personal consumption by an adult over twenty-one years of age; providing licensing requirements and registration procedures for wine suppliers, subject to a review of all wine labels; amending the definition of "wine"; adding a private wine bed and breakfast license and a private wine spa license; permitting adult patrons at private wine bed and breakfasts, private wine restaurants, private wine spas and private clubs to recork or reseal, with a tamper resistant cork or seal, for off-premises consumption up to two bottles of unconsumed wine when the sale of wine is accompanied by food or a meal; extending hours retail licensees may sell liquor; permitting a private wine restaurant or a private club to sell from its inventory, for off-premises consumption, one bottle of wine per adult; equalizing certain license fees; adding protections for wineries, farm wineries, suppliers and distributors by requiring written agreements between the parties, a notice of termination and ninety days for a party to either deplete wine inventories or reach some other agreement; and permitting sharing of tax, licensing and enforcement information between the Tax Commissioner and the Alcohol Beverage Control Commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17-22-7 of said code be amended and reenacted; that §60-1-5a of said code be amended and reenacted; that §60-3A-18 of said code be amended and reenacted; that §60-4-2, §60-4-3, §60-4-3a, §60-4-15 and §60-4-22 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §60-4-3b; that §60-6-1 and §60-6-2 of said code be amended and reenacted; that §60-8-1, §60-8-2, §60-8-3, §60-8-4, §60-8-5, §60-8-6, §60-8-7, §60-8-16, §60-8-18, §60-8-19,

§60-8-20, §60-8-23, §60-8-24, §60-8-25, §60-8-26, §60-8-28, §60-8-29, §60-8-30, §60-8-31, §60-8-32 and §60-8-34 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-8-6a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) *Purpose.* — The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information
3 as a protection of taxpayers' privacy rights and to
4 enhance voluntary compliance with the tax law. The
5 Legislature also recognizes the citizens' right to
6 accountable and efficient state government. To
7 accomplish these ends, the Legislature hereby creates
8 certain exceptions to the general principle of
9 confidentiality of taxpayer information.

10 (b) *Exceptions to confidentiality.* —

11 (1) Notwithstanding any provision in this code to the
12 contrary, the Tax Commissioner shall publish in the
13 State Register the name and address of every taxpayer
14 and the amount, by category, of any credit asserted on
15 a tax return under articles thirteen-c, thirteen-d,
16 thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r
17 and thirteen-s of this chapter and article one, chapter
18 five-e of this code. The categories by dollar amount of
19 credit received shall be as follows:

20 (A) More than one dollar, but not more than fifty
21 thousand dollars;

22 (B) More than fifty thousand dollars, but not more
23 than one hundred thousand dollars;

24 (C) More than one hundred thousand dollars, but not
25 more than two hundred fifty thousand dollars;

26 (D) More than two hundred fifty thousand, but not
27 more than five hundred thousand dollars;

28 (E) More than five hundred thousand dollars, but not
29 more than one million dollars; and

30 (F) More than one million dollars.

31 (2) Notwithstanding any provision in this code to the
32 contrary, the Tax Commissioner shall publish in the
33 State Register the following information regarding any
34 compromise of a pending civil tax case that occurs on or
35 after the effective date of this section in which the Tax
36 Commissioner is required to seek the written
37 recommendation of the Attorney General and the
38 Attorney General has not recommended acceptance of
39 the compromise or when the Tax Commissioner
40 compromises any civil tax case for an amount that is
41 more than two hundred fifty thousand dollars less than
42 the assessment of tax owed made by the Tax
43 Commissioner:

44 (A) The names and addresses of taxpayers that are
45 parties to the compromise;

46 (B) A summary of the compromise;

47 (C) Any written advice or recommendation rendered
48 by the Attorney General regarding the compromise; and

49 (D) Any written advice or recommendation rendered
50 by the Tax Commissioner's staff.

51 Under no circumstances may the tax return of the
52 taxpayer or any other information which would
53 otherwise be confidential under any other provisions of
54 law be disclosed pursuant to the provisions of this
55 subsection.

56 (3) Notwithstanding any provision in this code to the
57 contrary, the Tax Commissioner may disclose any
58 relevant return information to the prosecuting attorney
59 for the county in which venue lies for a criminal tax

60 offense when there is reasonable cause, based upon and
61 substantiated by the return information, to believe that
62 a criminal tax law has been or is being violated.

63 (4) Notwithstanding any provision in this code to the
64 contrary, the Tax Commissioner may enter into written
65 exchange of information agreements with the
66 commissioners of Labor, Employment Security, Alcohol
67 Beverage Control and Workers' Compensation to
68 disclose and receive timely return information:
69 *Provided*, That the Tax Commissioner may promulgate
70 rules pursuant to chapter twenty-nine-a of this code
71 regarding further agencies with which written exchange
72 of information agreements may be sought: *Provided*,
73 *however*, That the Tax Commissioner may not
74 promulgate emergency rules regarding further agencies
75 with which written exchange of information agreements
76 may be sought. The agreements shall be published in
77 the State Register and shall only be for the purpose of
78 facilitating premium collection, tax collection and
79 facilitating licensure requirements directly enforced,
80 administered or collected by the respective agencies.
81 The provisions of this subsection shall not be construed
82 to preclude or limit disclosure of tax information
83 authorized by other provisions of this code. Any
84 confidential return information so disclosed shall
85 remain confidential in the hands of the other division to
86 the extent provided by section five-d of this article and
87 by other applicable federal or state laws.

88 (5) Notwithstanding any provision of this code to the
89 contrary, the Tax Commissioner may enter into a
90 written agreement with the State Treasurer to disclose
91 to the State Treasurer the following business
92 registration information:

93 (A) The names, addresses and federal employer
94 identification numbers of businesses which have
95 registered to do business in West Virginia; and

96 (B) The type of business activity and organization of
97 those businesses. Disclosure of this information shall
98 begin as soon as practicable after the effective date of

99 this subsection and may be used only for the purpose of
100 recovery and disposition of unclaimed property in
101 accordance with the provisions of article eight, chapter
102 thirty-six of this code. The provisions of this subsection
103 shall not be construed to preclude or limit disclosure of
104 tax information authorized by other provisions of this
105 code. Any confidential return information disclosed
106 hereunder or thereunder shall otherwise remain
107 confidential to the extent provided by section five-d of
108 this article and by other applicable federal or state laws.

109 (c) *Tax expenditure reports.* — Beginning on the
110 fifteenth day of January, one thousand nine hundred
111 ninety-two, and every fifteenth day of January
112 thereafter, the Governor shall submit to the President of
113 the Senate and the Speaker of the House of Delegates a
114 tax expenditure report. This report shall expressly
115 identify all tax expenditures. Within three-year cycles,
116 the reports shall be considered together to analyze all
117 tax expenditures by describing the annual revenue loss
118 and benefits of the tax expenditure based upon
119 information available to the Tax Commissioner. For
120 purposes of this section, the term “tax expenditure”
121 shall mean a provision in the tax laws administered
122 under this article, including, but not limited to,
123 exclusions, deductions, tax preferences, credits and
124 deferrals designed to encourage certain kinds of
125 activities or to aid taxpayers in special circumstances:
126 *Provided,* That the Tax Commissioner shall promulgate
127 rules setting forth the procedure by which he or she will
128 compile the reports and setting forth a priority for the
129 order in which the reports will be compiled according to
130 type of tax expenditure.

131 (d) *Federal and state return information confidential.*
132 — Notwithstanding any other provisions of this section
133 or of this code, no return information made available to
134 the Tax Commissioner by the Internal Revenue Service
135 or department or agency of any other state may be
136 disclosed to another person in any manner inconsistent
137 with the provisions of Section 6103 of the Internal
138 Revenue Code of 1986, as amended, or of the other
139 states’ confidentiality laws.

CHAPTER 17. ROAD AND HIGHWAYS.

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

1 The provisions of section three of this article shall not
2 apply to the following: (a) Directional and other official
3 signs and notices required or authorized by law,
4 including, but not limited to, signs and notices
5 pertaining to natural wonders, farm wineries, mini-
6 distilleries, scenic and historical attractions, which such
7 signs and notices shall conform to standards respecting
8 lighting, size, number, spacing and such other
9 appropriate requirements as may be designated and
10 specified by the Secretary of Transportation of the
11 United States: *Provided*, That the Commissioner of the
12 Department of Highways shall not establish any
13 standards respecting lighting, size, number, spacing and
14 other appropriate requirements which are stricter than
15 such standards designated and specified by the
16 Secretary of Transportation of the United States; (b)
17 signs, displays and devices advertising the sale or lease
18 of property upon which they are located; and (c) signs,
19 displays and devices advertising activities conducted on
20 the property on which they are located, including
21 markers of underground utility facilities.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 (a) For the purpose of this chapter: "Farm winery"
2 means an establishment where in any year fifty
3 thousand gallons or less of wine and nonfortified dessert
4 wine are manufactured exclusively by natural
5 fermentation from grapes, other fruits or honey or other
6 agricultural products containing sugar and where port,
7 sherry and Madeira wine may also be manufactured,

8 with twenty-five percent of such raw products being
9 produced by the owner of such farm winery on the
10 premises of that establishment and no more than
11 twenty-five percent of such produce originating from
12 any source outside this state. Any port, sherry or
13 Madeira wine manufactured by a winery or a farm
14 winery must not exceed an alcoholic content of twenty-
15 two percent alcohol by volume and shall be matured in
16 wooden barrels or casks.

17 (b) Notwithstanding the provisions of subsection (a) of
18 this section, a farm winery may include one off-farm
19 location. The owner of a farm winery may provide to
20 the commissioner evidence, accompanied by written
21 findings by the West Virginia Agriculture Commissioner
22 in support thereof, that the owner has planted on the
23 premises of the farm winery young nonbearing fruit
24 plants. The commissioner may grant permission for one
25 off-farm location in an amount equal to that reasonably
26 expected to be produced when the nonbearing fruit
27 plants planted on the farm winery come into full
28 production. The length of time of the permission to use
29 an off-farm location shall be determined by the
30 commissioner after consultation with the Agriculture
31 Commissioner.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSES.

§60-3A-18. Days and hours retail licensees may sell liquor.

1 Retail licensees may not sell liquor on Sundays,
2 Christmas or election day, or between the hours of
3 twelve midnight and eight o'clock a. m., except that
4 wine and fortified wines may be sold on such days and
5 at such times as authorized in section thirty-four, article
6 eight of this chapter.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

1 The commission may grant licenses for the
2 manufacture of alcoholic liquors. Separate licenses

3 shall be issued to the following classes of manufacturing
4 establishments:

5 (1) Distilleries in which only alcoholic liquors other
6 than wine or beer is manufactured;

7 (2) Wineries in which only wines are manufactured;

8 (3) Breweries in which beer is manufactured;

9 (4) Bottling plants in which beer only is bottled;

10 (5) Industrial plants in which alcohol is distilled,
11 manufactured or otherwise produced for scientific,
12 chemical, mechanical or industrial purposes;

13 (6) Farm wineries in which only wines are
14 manufactured; and

15 (7) Mini-distilleries in which only alcoholic liquors
16 other than wine, beer or nonintoxicating beer are
17 manufactured.

§60-4-3. To whom licensed manufacturer may sell.

1 A person who is licensed to manufacture alcoholic
2 liquors in this state may sell liquors in this state only to
3 the West Virginia Alcohol Beverage Control
4 Commissioner and to wholesalers and retailers licensed
5 as provided in this chapter: *Provided*, That a holder of
6 a winery or a farm winery license may sell wines and a
7 holder of a distillery or a mini-distillery license may sell
8 alcoholic liquors manufactured by it in this state in
9 accordance with the provisions of section two, article
10 six of this chapter. Hours of retail sale by a winery or a
11 farm winery or distillery or a mini-distillery is subject
12 to regulation by the commissioner. A winery, distillery,
13 farm winery or mini-distillery may sell and ship
14 alcoholic liquors outside of the state subject to
15 provisions of this chapter.

**§60-4-3a. Distillery and mini-distillery license to manufacture
and sell.**

1 (a) *Sales of liquor.* — An operator of a distillery or a
2 mini-distillery may offer liquor for retail sale to
3 customers from the distillery or the mini-distillery for
4 consumption off premises only. Except for free
5 complimentary samples offered pursuant to section one,
6 article six of this chapter, customers are prohibited from
7 consuming any liquor on the premises of the distillery or
8 the mini-distillery.

9 (b) *Retail sales.* — Every licensed distillery or
10 mini-distillery shall comply with the provisions of
11 sections nine, eleven, thirteen, sixteen, seventeen,
12 eighteen, nineteen, twenty-two, twenty-three, twenty-
13 four, twenty-five and twenty-six, article three-a of this
14 chapter and the provisions of article three and four of
15 this chapter applicable to liquor retailers and distillers.

16 (c) *Payment of taxes and fees.* — The distillery or
17 mini-distillery shall pay all taxes and fees required of
18 licensed retailers and meet applicable licensing
19 provisions as required by this chapter and by rule of the
20 commissioner.

21 (d) *Payments to market zone retailers.* — Each
22 distillery or mini-distillery shall submit to the
23 commissioner ten percent of the gross sales price or each
24 retail liquor sale for the value of all sales at the
25 distillery or the mini-distillery each month. This
26 collection shall be distributed by the commissioner, at
27 least quarterly, to each market zone retailer located in
28 the distillery or mini-distillery's market zone,
29 proportionate to each market zone retailer's annual
30 gross prior years pretax value sales.

31 (e) *Limitations on licensees.* — No distillery or
32 mini-distillery may sell more than three thousand
33 gallons of product at the distillery or mini-distillery
34 location the initial two years of licensure. The distillery
35 or mini-distillery may increase sales at the distillery or
36 mini-distillery location by two thousand gallons
37 following the initial twenty-four month period of
38 licensure, and may increase sales at the distillery or
39 mini-distillery location each subsequent twenty-four

40 month period by two thousand gallons, not to exceed
41 ten thousand gallons a year of total sales at the distillery
42 or mini-distillery location. No licensed mini-distillery
43 may produce more than twenty thousand gallons per
44 calendar year at the mini-distillery location. No more
45 than one distillery or mini-distillery license may be
46 issued to a single person or entity and no person may
47 hold both a distillery and a mini-distillery license.

**§60-4-3b. Winery and farm winery license to manufacture and
sell.**

1 (a) *Sales of wine.* — An operator of a winery or farm
2 winery may offer wine produced by the winery or farm
3 winery for retail sale to customers from the winery or
4 farm winery for consumption off the premises only.
5 Except for free complimentary samples offered
6 pursuant to section one, article six of this chapter,
7 customers are prohibited from consuming any wine on
8 the premises of the winery or farm winery, unless such
9 winery or farm winery has obtained a multi capacity
10 winery or farm winery license.

11 (b) *Retail sales.* — Every licensed winery or farm
12 winery shall comply with the provisions of articles
13 three, four and eight of this chapter as applicable to
14 wine retailers, wineries and suppliers when properly
15 licensed in such capacities.

16 (c) *Payment of taxes and fees.* — The winery or farm
17 winery shall pay all taxes and fees required of licensed
18 wine retailers and meet applicable licensing provisions
19 as required by this chapter and by rule of the
20 commissioner. Each winery or farm winery acting as its
21 own supplier shall submit to the Tax Commissioner the
22 liter tax for all sales at the winery or farm winery each
23 month, as provided in article eight of this chapter.

24 (d) *Advertising.* — A winery or farm winery may
25 advertise a particular brand or brands of wine produced
26 by it, and the price of the wine subject to federal
27 requirements or restrictions.

28 (e) *Limitations on licensees.* — A winery or farm
29 winery must maintain separate winery or farm winery
30 supplier, retailer and direct shipper licenses when
31 acting in one or more of those capacities, and must pay
32 all associated license fees, unless such winery or farm
33 winery holds a license issued pursuant to the provisions
34 of subdivision (12), subsection (b), section three, article
35 eight of this chapter. A winery or farm winery, if
36 holding the appropriate licenses or a multi-capacity
37 winery or farm winery license, may act as its own
38 supplier; retailer for off-premises consumption of its
39 wine as specified in section two, article six of this
40 chapter; private wine restaurant; and direct shipper for
41 wine produced by the winery or farm winery. All
42 wineries must use a distributor to distribute and sell
43 their wine in the state, except for farm wineries. No
44 more than one winery or farm winery license may be
45 issued to a single person or entity, and no person may
46 hold both a winery and a farm winery license.

§60-4-15. Amount of license fees.

1 A person to whom a license is issued under the
2 provisions of this chapter shall pay annually to the
3 commissioner a license fee as follows, for:

4 (1) Distilleries, one thousand five hundred dollars;

5 (2) Wineries, one thousand five hundred dollars;

6 (3) Breweries, one thousand five hundred dollars;

7 (4) Bottling plants, one hundred dollars;

8 (5) Wholesale druggists, fifty dollars;

9 (6) Institutions, ten dollars;

10 (7) Industrial use, fifty dollars;

11 (8) Industrial plants producing alcohol, two hundred
12 fifty dollars;

- 13 (9) Retail druggists, ten dollars;
- 14 (10) Farm wineries, fifty dollars;
- 15 (11) Mini-distilleries, fifty dollars.

§60-4-22. Wholesale representatives' licenses.

1 A person, firm or corporation may not be or act or
2 serve as an agent, broker or salesman selling or offering
3 to sell or soliciting or negotiating the sale of alcoholic
4 liquor to the commission or to any distributor licensed
5 pursuant to article eight of this chapter without first
6 obtaining a license so to do in accordance with the
7 provisions of this section. Only salaried employees of
8 distilleries, manufacturers, producers or processors of
9 alcoholic liquor may be licensed hereunder and no
10 person may be licensed hereunder who sells or offers to
11 sell alcoholic liquor to the commission or any
12 distributor on a fee or commission basis. The
13 commission shall be the licensing authority and may
14 grant to persons of good moral character the license
15 herein provided and may refuse to grant such license to
16 any person convicted of a felony within ten years prior
17 to his or her application for such license; refuse to grant,
18 suspend or revoke licenses. Licenses shall be on an
19 annual basis for the period from the first day of July
20 until the thirtieth day of June next following. New and
21 renewal licenses shall be granted only upon verified
22 application to the commission presented on forms
23 provided by the commission. Any person representing
24 more than one producer, manufacturer or distributor of
25 alcoholic liquors shall file a separate application and
26 shall obtain a separate license for each such
27 representation. The annual license fee shall be one
28 hundred dollars. The fee for any license granted for the
29 remainder of any license year between the first day of
30 January and the thirtieth day of June of the same
31 calendar year shall be fifty dollars.

32 No person who is the father, mother, son, daughter,
33 brother, sister, uncle, aunt, nephew or niece of a
34 member of the commission or of any elected or

35 appointed state official, county official or municipal
36 official, or who is the spouse of any such person so
37 related to a member of the commission or to any elected
38 or appointive state official, county official or municipal
39 official, may be granted a license. No member of the
40 Legislature or the spouse of any such member may be
41 granted a license. Nor may any member or officer of
42 any political party executive committee of this state or
43 the spouse of any such member or officer be granted a
44 license.

45 In addition to all other information which the
46 commission may require to be supplied on the license
47 application forms, each applicant shall be required to
48 state his or her name and his or her residence address
49 and the name and business address of the producer,
50 manufacturer or distributor he represents; the name and
51 address of each additional producer, manufacturer or
52 distributor of alcoholic liquors he or she represents; the
53 monetary total of all alcoholic liquor sales, if any, made
54 by him or her to the commission or to any distributor
55 licensed pursuant to article eight of this chapter during
56 the fiscal year preceding the license year for which he or
57 she is seeking a license; the monetary total of the gross
58 income received by him or her on such sales, if any,
59 during such fiscal year; whether he or she has, during
60 such fiscal year, made or given, voluntarily or on
61 request, any gift, contribution of money or property to
62 any member or employee of the commission or of any
63 distributor licensed pursuant to article eight of this
64 chapter or to or for the benefit of any political party
65 committee or campaign fund; and his or her
66 relationship, if any, by blood or marriage, to any
67 member of the commission or to any elected or
68 appointive state official, county official or municipal
69 official. All such applications shall be verified by oath
70 of the applicant and shall be prepared and filed in
71 duplicate. All such applications and a current list of all
72 licensees hereunder shall be matters of public record
73 and shall be available to public inspection at the
74 commission's offices at the state capitol. Every licensee
75 who ceases to be an agent, broker or salesman, as herein
76 contemplated, shall so advise the commission in writing

77 and such person's name shall be immediately removed
78 from the license list and his or her license shall be
79 canceled and terminated.

80 All persons licensed under this section shall be
81 authorized representatives of the wineries, farm
82 wineries, distilleries, mini-distilleries, manufacturers,
83 producers or processors of alcoholic liquor they
84 represent. A licensed person may not share, divide or
85 split his or her salary with any person other than his
86 wife or some legal dependent, nor may he or she make
87 any contribution to any political party campaign fund
88 in this state.

89 All licensees shall be subject to all other provisions of
90 this chapter and to the lawful rules promulgated by the
91 commission. Licenses may be refused, suspended or
92 revoked by the commission for cause, including any of
93 the applicable grounds of revocation specified in section
94 nineteen of this article. Provisions of this article
95 relating to notice, hearing and appeals shall, to the
96 extent applicable, govern procedures on suspension and
97 revocation of licenses hereunder.

98 Any person, firm or corporation violating any
99 provision of this section, including knowingly making of
100 any false statement in a verified application for a license
101 shall be guilty of a misdemeanor offense and shall, upon
102 conviction thereof, be fined not exceeding one thousand
103 dollars or imprisoned in jail not exceeding twelve
104 months, or be subject to both such fine and
105 imprisonment in the discretion of the court.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

1 The provisions of this chapter may not prevent:

2 (1) A person from keeping and possessing alcoholic
3 liquors in his or her residence for the personal use of
4 himself or herself, his or her family, his or her employee
5 or his or her guests if the alcoholic liquors have been

6 lawfully acquired by him or her;

7 (2) A person, his or her family, or employee from
8 giving or serving such alcoholic liquors to guests in the
9 residence, when the gift or service is not for the purpose
10 of evading the provisions of this chapter;

11 (3) The holder of a winery or a farm winery license
12 from serving complimentary samples of its wine in
13 moderate quantities for tasting on the winery or the
14 farm winery premises; and

15 (4) The holder of a distillery or a mini-distillery license
16 from serving complimentary samples of its alcoholic
17 liquor in moderate quantities for tasting on the
18 distillery or the mini-distillery premises.

§60-6-2. When lawful to manufacture and sell wine and cider.

1 The provisions of this chapter may not prevent:

2 (1) A person from manufacturing wine at his or her
3 residence for consumption at his or her residence as
4 permitted by section one of this article;

5 (2) A person from manufacturing and selling
6 unfermented cider;

7 (3) A person from manufacturing and selling cider
8 made from apples produced by him or her within this
9 state to persons holding distillery licenses, if the
10 manufacture and sale is under the supervision and
11 regulation of the commissioner;

12 (4) A person from manufacturing and selling wine
13 made from fruit produced by him or her within this
14 state to persons holding winery licenses, if the
15 manufacture and sale is under the supervision and
16 regulation of the commissioner;

17 (5) The holder of a winery or a farm winery license
18 from selling wine for off-premises consumption sold at
19 retail at the winery or the farm winery, as provided in

20 section four, article three-b of this chapter, or for any
21 other person who is licensed under this chapter to sell
22 wine as a wine supplier or distributor; and

23 (6) The holder of a distillery or a mini-distillery license
24 from selling alcoholic liquor for off-premises
25 consumption sold at retail at the distillery or the mini-
26 distillery, as provided in section four, article three-a of
27 this chapter.

ARTICLE 8. SALE OF WINES.

**PART I. CONSTRUCTION AND APPLICATION OF
ARTICLE.**

§60-8-1. Construction and application of article.

1 (a) Every supplier must use a distributor to distribute
2 wine for retail sale in this state, except for such sales
3 that occur by wineries, farm wineries or suppliers
4 holding a direct shipper's license or farm wineries
5 holding a multi-capacity farm winery license. The
6 provisions of Part II of this article shall have general
7 application to the distribution and retail sale of wine in
8 this state. The provisions of Part III of this article shall
9 relate solely to the distribution and the regulation of
10 suppliers and distributors of such wines as may be
11 permitted to be sold at retail pursuant to the provisions
12 of this article. The provisions of Part IV of this article
13 shall relate solely to the retail sale of wine in grocery
14 stores as the term "grocery store" is defined in this
15 article and the retail sale of wine in wine specialty shops
16 as defined in this article. In the event of any
17 inconsistency of any provisions of Part II and the
18 provisions of either Part III or Part IV of this article, the
19 provisions of either Part III or Part IV shall prevail to
20 the extent of such inconsistency.

21 (b) In the event of any inconsistency between any of
22 the provisions of this article and provisions of any other
23 article of this chapter or of this code, the provisions of
24 this article shall prevail to the extent of any such
25 inconsistency.

26 (c) To the extent the provisions of this chapter
27 exclusive of this article may be given application
28 without creating an inconsistency with the provisions of
29 this article, the provisions of this chapter, exclusive of
30 this article, shall apply to the same extent as if this
31 article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West
4 Virginia Alcohol Beverage Control Commissioner.

5 "Distributor" means any person whose principal place
6 of business is within the State of West Virginia who
7 makes purchases from a supplier to sell or distribute
8 wine to retailers, grocery stores, private wine bed and
9 breakfasts, private wine restaurants, private wine spas,
10 private clubs or wine specialty shops and that sells or
11 distributes nonfortified dessert wine, port, sherry and
12 Madeira wines to wine specialty shops, private wine
13 restaurants, private clubs or retailers under authority of
14 this article and maintains a warehouse in this state for
15 the distribution of wine.

16 "Fortified wine" shall mean any wine to which brandy
17 or other alcohol has been added and shall include
18 dessert wines which are not fortified having an alcohol
19 content by volume of at least fourteen and one-tenths
20 percent and not exceeding sixteen percent.

21 "Grocery store" means any retail establishment,
22 commonly known as a grocery store, supermarket,
23 delicatessen, caterer or party supply store, where food,
24 food products and supplies for the table are sold for
25 consumption off the premises with average monthly
26 sales (exclusive of sales of wine) of not less than five
27 hundred dollars and an average monthly inventory
28 (exclusive of inventory of wine) of not less than three

29 thousand dollars. The term “grocery store” shall also
30 include and mean a separate and segregated portion of
31 any other retail store which is dedicated solely to the
32 sale of food, food products and supplies for the table for
33 consumption off the premises with average monthly
34 sales with respect to such separate or segregated portion
35 (exclusive of sales of wine) of not less than three
36 thousand dollars and an average monthly inventory
37 (exclusive of inventory of wine) of not less than three
38 thousand dollars.

39 “Licensee” means the holder of a license granted
40 under the provisions of this article.

41 “Private wine bed and breakfast” means any business
42 with the sole purpose of providing, in a residential or
43 country setting, a hotel, motel, inn or other such
44 establishment properly zoned as to its municipality or
45 local ordinances, lodging and meals to its customers in
46 the course of their stay at the establishment, which
47 business also: (1) Is a partnership, limited partnership,
48 corporation, unincorporated association or other
49 business entity which as part of its general business
50 purpose provides meals on its premises to its members
51 and their guests; (2) is licensed under the provisions of
52 this article as to all of its premises or as to a separate
53 segregated portion of its premises to serve wine to its
54 members and their guests when such sale accompanies
55 the serving of food or meals; and (3) admits only duly
56 elected and approved dues paying members and their
57 guests while in the company of a member and does not
58 admit the general public.

59 “Private wine restaurant” means a restaurant which:
60 (1) Is a partnership, limited partnership, corporation,
61 unincorporated association or other business entity
62 which has as its principal purpose the business of
63 serving meals on its premises to its members and their
64 guests; (2) is licensed under the provisions of this article
65 as to all of its premises or as to a separate segregated
66 portion of its premises to serve wine to its members and
67 their guests when such sale accompanies the serving of
68 food or meals; (3) admits only duly elected and approved

69 dues paying members and their guests while in the
70 company of a member and does not admit the general
71 public. Such private clubs that meet the private wine
72 restaurant requirements numbered (1), (2) and (3) in this
73 definition shall be considered private wine restaurants.

74 "Private wine spa" means any business with the sole
75 purpose of providing commercial facilities devoted
76 especially to health, fitness, weight loss, beauty,
77 therapeutic services and relaxation, and may be also a
78 licensed massage parlor or a salon with licensed
79 beauticians or stylists, which business also: (1) Is a
80 partnership, limited partnership, corporation,
81 unincorporated association or other business entity
82 which as part of its general business purpose provides
83 meals on its premises to its members and their guests;
84 (2) is licensed under the provisions of this article as to
85 all of its premises or as to a separate segregated portion
86 of its premises to serve up to two glasses of wine to its
87 members and their guests when such sale accompanies
88 the serving of food or meals; and (3) admits only duly
89 elected and approved dues paying members and their
90 guests while in the company of a member, and does not
91 admit the general public.

92 "Retailer" means any person licensed to sell wine at
93 retail to the public at his or her established place of
94 business for off-premises consumption and who is
95 licensed to do so under authority of this article.

96 "Supplier" means any manufacturer, producer,
97 processor, winery, farm winery, national distributor or
98 other supplier of wine who sells or offers to sell or
99 solicits or negotiates the sale of wine to any licensed
100 West Virginia distributor.

101 "Tax" includes within its meaning interest, additions
102 to tax and penalties.

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

106 "Varietal wine" means any wine labeled according to
107 the grape variety from which such wine is made.

108 "Vintage wine" or "vintage-dated wine" means wines
109 from which the grapes used to produce such wine are
110 harvested during a particular year or wines produced
111 from the grapes of a particular harvest in a particular
112 region of production.

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

122 "Wine specialty shop" means a retailer who shall deal
123 principally in the sale of table wine, nonfortified dessert
124 wines, wine accessories and food or foodstuffs normally
125 associated with wine and: (1) Who shall maintain a
126 representative number of such wines for sale in his or
127 her inventory which are designated by label as varietal
128 wine, vintage, generic and/or according to region of
129 production and the inventory shall contain not less than
130 fifteen percent vintage or vintage-dated wine by actual
131 bottle count; and (2) who, any other provisions of this
132 code to the contrary notwithstanding, may maintain an
133 inventory of port, sherry and Madeira wines having an
134 alcoholic content of not more than twenty-two percent
135 alcohol by volume and which have been matured in
136 wooden barrels or casks.

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

1 (a) No person may engage in business in the capacity
2 of a winery, farm winery, supplier, distributor, retailer,
3 private wine bed and breakfast, private wine restaurant,
4 private wine spa or wine specialty shop without first
5 obtaining a license from the commissioner, nor shall a
6 person continue to engage in any such activity after his

7 or her license has expired, been suspended or revoked.
8 No person may be licensed simultaneously as a
9 distributor and a retailer. No person, except for a
10 winery or farm winery, may be licensed simultaneously
11 as a supplier and a retailer. No person may be licensed
12 simultaneously as a supplier and a private wine bed and
13 breakfast, private wine restaurant or a private wine spa.
14 No person may be licensed simultaneously as a
15 distributor and a private wine bed and breakfast, a
16 private wine restaurant or a private wine spa. No
17 person may be licensed simultaneously as a retailer and
18 a private wine bed and breakfast, a private wine
19 restaurant or a private wine spa.

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

22 (1) One hundred fifty dollars per year for a supplier's
23 license;

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

31 (3) One hundred fifty dollars per year for a retailer's
32 license;

33 (4) Two hundred fifty dollars per year for a wine
34 specialty shop license, in addition to any other licensing
35 fees paid by a winery or retailer holding such a license,
36 except for the amount of the license fee and the
37 restriction to sales of winery or farm winery wines, a
38 winery or farm winery acting as a wine specialty shop
39 retailer is subject to all other provisions of this article
40 which are applicable to a wine specialty shop retailer as
41 defined in section two of this article;

42 (5) One hundred fifty dollars per year for a wine
43 tasting license;

44 (6) One hundred fifty dollars per year for a private
45 wine bed and breakfast license, and each separate bed
46 and breakfast from which a licensee sells wine shall be
47 separately licensed and there shall be collected with
48 respect to each such location the annual license fee of
49 one hundred fifty dollars as herein provided;

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

56 (8) One hundred fifty dollars per year for a private
57 wine spa license and each separate private wine spa
58 from which a licensee sells wine shall be separately
59 licensed and there shall be collected with respect to
60 each such location the annual license fee of one hundred
61 fifty dollars as herein provided;

62 (9) One hundred fifty dollars per year for a wine
63 sampling license issued for a wine specialty shop under
64 subsection (n) of this section;

65 (10) No fee shall be charged for a special one-day
66 license under subsection (o) of this section or for a
67 heritage fair and festival license under subsection (p) of
68 this section; and

69 (11) One hundred fifty dollars per year for a direct
70 shipper's license for a licensee who sells and ships only
71 wine and two hundred fifty dollars per for a direct
72 shipper's license who ships and sells wine, nonfortified
73 dessert wine, port, sherry or Madeira wines.

74 (12) Three hundred dollars per year for a multi-
75 capacity winery or farm winery license which shall
76 enable the holder to operate as a retailer, wine specialty
77 shop, supplier and direct shipper without obtaining an
78 individual license for each capacity.

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

84 (d) No retailer may be licensed as a private club as
85 provided by article seven of this chapter, except as
86 provided by subsection (k) of this section.

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

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

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

118 wine specialty shop.

119 (h) The commissioner may issue a special license for
120 the retail sale of wine at any festival or fair which is
121 endorsed or sponsored by the governing body of a
122 municipality or a county commission. Such special
123 license shall be issued for a term of no longer than ten
124 consecutive days and the fee therefor shall be two
125 hundred fifty dollars regardless of the term of the
126 license unless the applicant is the manufacturer of said
127 wine on a winery or a farm winery as defined in section
128 five-a, article one of this chapter, in which event the fee
129 shall be fifty dollars if the event is held on the premises
130 of the winery or farm winery. The application for such
131 license shall contain such information as the
132 commissioner may reasonably require and shall be
133 submitted to the commissioner at least thirty days prior
134 to the first day when wine is to be sold at such festival
135 or fair. A winery or a farm winery licensed under this
136 subsection may exhibit, conduct tastings, not to exceed
137 a reasonable serving, and may sell wine only for
138 consumption off the premises of such festival or fair. A
139 special license issued other than to a winery or a farm
140 winery may be issued to a "wine club" as defined herein
141 below. The festival or fair committee or the governing
142 body shall designate a person to organize a club under
143 a name which includes the name of the festival or fair
144 and the words "wine club". The license shall be issued
145 in the name of the wine club. A licensee may not
146 commence the sale of wine as provided in this
147 subsection until the wine club has at least fifty dues
148 paying members who have been enrolled and to whom
149 membership cards have been issued. Thereafter, new
150 members may be enrolled and issued membership cards
151 at any time during the period for which the license is
152 issued. A wine club licensed under the provisions of this
153 subsection may sell wine only to its members, and in
154 portions not to exceed eight ounces per serving. Such
155 sales shall take place on premises or in an area cordoned
156 or segregated so as to be closed to the general public,
157 and the general public shall not be admitted to such
158 premises or area. A wine club licensee under the
159 provisions of this subsection shall be authorized to serve

160 complimentary samples of wine in moderate quantities
161 for tasting.

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

178 A license issued under the provisions of this
179 subsection and the licensee holding such license shall
180 not be subject to the provisions of subsection (g) of this
181 section.

182 (i) A license to sell wine granted to a private wine bed
183 and breakfast, private wine restaurant, private wine spa
184 or a private club under the provisions of this article
185 entitles the operator to sell and serve wine, for
186 consumption on the premises of the licensee, when such
187 sale accompanies the serving of food or a meal to its
188 members and their guests in accordance with the
189 provisions of this article: *Provided*, That a licensed
190 private wine bed and breakfast, private wine restaurant,
191 private wine spa or a private club may permit a person
192 over twenty-one years of age to purchase wine, consume
193 wine and recork or reseal, using a tamper resistant cork
194 or seal, up to two separate bottles of unconsumed wine
195 in conjunction with serving of food or a meal to its
196 members and their guests in accordance with the
197 provisions of this article and in accordance with
198 regulations promulgated by the commissioner for the
199 purpose of consumption of said wine off premises:

200 *Provided, however,* That for this article, food or a meal
201 provided by the private licensee means that the total
202 food purchase, excluding beverage purchases, taxes,
203 gratuity or other fees is at least fifteen dollars: *Provided*
204 *further,* That a licensed private wine restaurant or a
205 private club may offer for sale for consumption off the
206 premises, sealed bottles of wine to its customers
207 provided that no more than one bottle is sold per each
208 person over twenty-one years of age, as verified by the
209 private wine restaurant or private club, for consumption
210 off the premises. Such licensees are authorized to keep
211 and maintain on their premises a supply of wine in such
212 quantities as may be appropriate for the conduct of
213 operations thereof. Any sale of wine so made shall be
214 subject to all restrictions set forth in section twenty of
215 this article. A private wine restaurant may also be
216 licensed as a Class A retail dealer in nonintoxicating
217 beer as provided by article sixteen, chapter eleven of
218 this code.

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

227 (k) The commissioner shall promulgate legislative
228 rules in accordance with the provisions of chapter
229 twenty-nine-a of this code to allow restaurants to serve
230 wine with meals, and to sell wine by the bottle for off-
231 premises consumption as provided in subsection (i) of
232 this section. Each restaurant so licensed shall be
233 charged an additional one hundred-dollar per year fee.

234 (l) The commissioner shall establish guidelines to
235 permit wines to be sold in all stores licensed for retail
236 sales.

237 (m) Wineries and farm wineries may advertise off
238 premises as provided in section seven, article twenty-
239 two, chapter seventeen of this code.

240 (n) A wine specialty shop under this article may also
241 hold a wine sampling license authorizing the wine
242 specialty shop to conduct special wine sampling events
243 at a licensed wine specialty shop location during regular
244 hours of business. The wine specialty shop may serve
245 up to three complimentary samples of wine, consisting
246 of no more than one ounce each, to any one consumer in
247 one day. Persons serving the complimentary samples
248 must be twenty-one years of age and an authorized
249 representative of the licensed wine specialty shop,
250 winery, farm winery or a representative of a distributor
251 or registered supplier. Distributor and supplier
252 representatives attending wine sampling events must be
253 registered with the commissioner. No licensee,
254 employee or representative may furnish, give or serve
255 complimentary samples of wine to any person less than
256 twenty-one years of age or to a person who is physically
257 incapacitated due to the consumption of alcoholic liquor
258 or the use of drugs. The wine specialty shop shall notify
259 and secure permission from the commissioner for all
260 wine sampling events one month prior to the event.
261 Wine sampling events may not exceed six hours per
262 calendar day. Licensees must purchase all wines used
263 during these events from a licensed farm winery or a
264 licensed distributor.

265 (o) The commissioner may issue special one-day
266 licenses to duly organized, nonprofit corporations and
267 associations allowing the sale and serving of wine when
268 raising money for athletic, charitable, educational or
269 religious purposes. The license application shall contain
270 information as the commissioner may reasonably
271 require and shall be submitted to the commissioner at
272 least thirty days prior to the event. Wines used during
273 these events may be donated by or purchased from a
274 licensed retailer, a distributor or a farm winery. Under
275 no circumstances may the provision of subsection (c),
276 section twenty of this article be waived nor may any
277 exception be granted with respect thereto.

278 (p) The commissioner may issue special licenses to
279 heritage fairs and festivals allowing the sale, serving
280 and sampling of wine from a licensed farm winery. The
281 license application shall contain information required
282 by the commissioner and shall be submitted to the
283 commissioner at least thirty days prior to the event.
284 Wines used during these events may be donated by or
285 purchased from a licensed farm winery. Under no
286 circumstances may the provision of subsection (c),
287 section twenty of this article be waived nor may any
288 exception be granted with respect thereto. The
289 commissioner shall propose rules for legislative
290 approval in accordance with article three, chapter
291 twenty-nine-a of this code to implement the provisions
292 of this subsection.

§60-8-4. Liter tax.

1 There is hereby levied and imposed on all wine sold
2 after the first day of July, two thousand seven, by
3 suppliers to distributors, and including all wine sold
4 and sent to West Virginia adult residents from direct
5 shippers, except wine sold to the commissioner, a tax of
6 twenty-six and four hundred six-thousandths cents per
7 liter.

8 Before the sixteenth day of each month thereafter,
9 every supplier, distributor and directshipper shall make
10 a written report under oath to the Tax Commissioner
11 and the commissioner showing the identity of the
12 purchaser, the quantity, label and alcoholic content of
13 wine sold by the supplier to West Virginia distributors
14 or the direct shipper to West Virginia adult residents
15 during the preceding month and at the same time shall
16 pay the tax imposed by this article on the wine sold to
17 the distributor or the West Virginia adult residents
18 during the preceding month to the Tax Commissioner.

19 The reports shall contain other information and be in
20 the form the Tax Commissioner may require. For
21 purposes of this article, the reports required by this
22 section shall be considered tax returns covered by the
23 provisions of article ten, chapter eleven of this code.

24 Failure to timely file the tax returns within five
25 calendar days of the sixteenth day of each month will
26 also subject a supplier, distributor and direct shipper to
27 penalties under section eighteen of this article.

28 No wine imported, sold or distributed in this state or
29 sold and shipped to this state by a direct shipper shall
30 be subject to more than one liter tax.

§60-8-5. Refund or credit of taxes.

1 The Tax Commissioner shall refund, or credit on a
2 subsequent return, any tax which has been erroneously
3 or illegally collected. In the event that a licensee, while
4 the owner of wine on which the tax imposed by this
5 article has been paid, loses such wine through fire or
6 casualty, other than breakage occurring on the premises
7 of the licensee because such wine has been declared by
8 the commissioner to be unfit for sale and the amount of
9 tax paid exceeds fifty dollars, the Tax Commissioner
10 shall refund the tax paid. The commissioner shall
11 promulgate regulations establishing the procedure and
12 nature of proof required in case of any claim for refund
13 or credit.

**§60-8-6. License or registration required for sale or shipment
of wine; shipment of limited quantities of wine to
adult residents permitted.**

1 (a) Except as to the commissioner and except as
2 provided in subsection (b) of this section, no person may
3 offer for sale or sell wine in this state, or offer wine for
4 shipment into this state, except to a distributor who is
5 duly licensed under this article. Every person, whether
6 resident or nonresident in this state, who is engaged in
7 or desires to engage in the sale or shipment of wine to a
8 distributor for resale under this article shall, prior to
9 engaging in such activities, register with the
10 commissioner. If any such person violates the
11 provisions of this article, he shall not be permitted to
12 sell, ship or deliver any wine to a distributor or to the
13 commissioner, or otherwise engage in the wine business
14 in this state for a period of one year from the date a

15 notice is mailed to such person by the commissioner of
16 the fact that such person has violated the provisions of
17 this article. During such one-year period, it shall be
18 unlawful for any distributor within this state to buy or
19 receive wine from such person or to have any dealings
20 with such person with respect thereto. Hearings and
21 appeals on such notices may be had in the same manner
22 as in the case of revocations of licenses under this
23 article.

24 (b) Notwithstanding the provisions of this chapter or
25 any other law to the contrary, any person or winery that
26 is currently licensed and in good standing in its domicile
27 state as a winery, farm winery, supplier or retailer of
28 wine and who obtains a direct shipper's license from the
29 commissioner, as provided in this chapter, may ship up
30 to a maximum of two cases of wine per month directly
31 to adult West Virginia residents who are twenty-one
32 years of age or over, for such adult resident's personal
33 use and consumption and not for resale. Licensed direct
34 shippers must maintain accurate records of all
35 shipments sent to West Virginia residents. All
36 shipments of wine into West Virginia by licensed direct
37 shippers shall be made by a licensed and bonded
38 shipping carrier. Direct shippers and their carriers shall
39 not ship wine to areas of West Virginia where wine may
40 not be lawfully sold by county, local or municipal law.
41 Any holder of a direct shipper's license must collect all
42 taxes, sales taxes, municipal taxes and the liter tax due
43 to West Virginia, remit all sales, municipal taxes and the
44 liter tax to the tax commissioner at the close of each
45 month and file a monthly return reflecting the taxes
46 paid for all sales and shipments to residents in West
47 Virginia. The commissioner shall prescribe the forms to
48 be used to file the monthly returns. The shipping
49 container of any wine sent into or out of this state under
50 this subsection shall be clearly and conspicuously
51 labeled to indicate that the package cannot be delivered
52 to: (1) Any person under the age of twenty-one; (2) to an
53 intoxicated person; or (3) to a person physically
54 incapacitated due to the consumption of
55 nonintoxicating beer, wine or alcoholic liquors or the
56 use of drugs; and (4) the carriers are required to obtain

57 a written or electronic signature upon delivery of an
58 adult resident who the carrier verifies is at least twenty-
59 one years of age or older and if the carrier is not able to
60 obtain a signature of a verified adult resident at least
61 twenty-one years of age or older, then the carrier may
62 not complete the delivery of the wine shipment. Failure
63 of any holder of a direct shipper's license or such
64 licensee's carrier to abide by the provisions of this
65 chapter and the commissioner's rules may subject the
66 direct shipper to the penalties available to the
67 commissioner under section eighteen of this article.

§60-8-6a. Direct shipper's license.

1 (a) Before sending any shipment of wine to a resident
2 of West Virginia, the direct shipper must first:

3 (1) File a license application with the commissioner
4 with the appropriate background check information,
5 using forms required by the commissioner. Criminal
6 background checks will not be required of applicants
7 licensed in their state of domicile who can provide a
8 certificate of good standing from their state of domicile;

9 (2) Pay to the commissioner either the one hundred
10 fifty- dollar license fee to ship and sell only wine, the
11 two hundred fifty-dollar license fee to ship and sell wine
12 and nonfortified dessert wine, port, sherry or Madeira
13 wines, or the three hundred-dollar multicapacity winery
14 or farm winery license fee;

15 (3) Obtain a business registration number from the
16 Tax Commissioner;

17 (4) Register with the office of the Secretary of State, if
18 a corporation;

19 (5) Provide the commissioner a true copy of its current
20 alcoholic beverage license issued in the state of
21 domicile, proving that the direct shipper is licensed in
22 its state of domicile as a winery, farm winery, supplier
23 or retailer of wine;

24 (6) Obtain from the commissioner a direct shipper's
25 license;

26 (7) Submit to the commissioner a list of all brands of
27 wine to be shipped to West Virginia residents; and

28 (8) Meet all other licensing requirements of this
29 chapter and provide any other information that the
30 commissioner may reasonably require.

31 (b) All direct shipper licensees shall:

32 (1) Not ship more than two cases of wine per month to
33 any person. A case is defined as any combination of
34 packages containing not more than nine liters of wine;

35 (2) Not ship to any address in an area identified by the
36 commissioner as a "dry" or local option area where it is
37 unlawful to sell wine or alcoholic liquors;

38 (3) Not ship to any licensed suppliers, distributors,
39 retailers, private wine bed and breakfasts, private wine
40 restaurants, private wine spas or wine specialty shops;

41 (4) Not ship wine from overseas or internationally
42 unless it is first shipped to a licensed supplier or
43 distributor;

44 (5) Ensure that all containers of wine shipped directly
45 to a resident in this state are clearly and conspicuously
46 labeled with the words "CONTAINS ALCOHOL:
47 SIGNATURE OF PERSON 21 OR OLDER REQUIRED
48 FOR DELIVERY";

49 (6) File monthly returns to the commissioner and the
50 Tax Commissioner showing the total of wines, by type,
51 sold and shipped into West Virginia for the preceding
52 month;

53 (7) Pay to the Tax Commissioner all sales taxes,
54 municipal taxes and the liter tax due on sales and
55 shipments to residents of West Virginia in the preceding
56 month, the amount of such taxes to be calculated as the

57 sales were made in West Virginia at the location where
58 delivery is made;

59 (8) Permit the Tax Commissioner or commissioner or
60 their designees to perform an audit of the direct
61 shipper's records upon request;

62 (9) Be deemed to have consented to the jurisdiction of
63 the commissioner or any other state agency, the
64 Kanawha County circuit court located in Charleston,
65 West Virginia, concerning enforcement of this article
66 and any other related laws, rules; and

67 (10) Provide proof or records to the commissioner,
68 upon request, that all direct shipments of wine were
69 purchased and delivered to an adult resident of West
70 Virginia over the age of twenty-one years of age.

71 (c) The direct shipper may annually renew its license
72 with the commissioner by application, paying the direct
73 shipper license fee and providing the commissioner with
74 a true copy of a current alcoholic beverage license from
75 the direct shipper's domicile state.

76 (d) The commissioner may promulgate rules to
77 effectuate the purposes of this law.

78 (e) The commissioner may enforce the requirements of
79 this section by administrative proceedings to suspend or
80 revoke a direct shipper's license, and the commissioner
81 may accept payment of a penalty or an offer in
82 compromise in lieu of suspension, at the commissioner's
83 discretion.

84 (f) Shipments of wine direct to consumers in West
85 Virginia from persons who do not possess a current
86 direct shipper's license or other permit or license from
87 the commissioner are prohibited. Any person who
88 knowingly makes, participates in, transports, imports or
89 receives such an unlicensed and unauthorized direct
90 shipment is guilty of a felony and shall upon conviction
91 thereof, be fined in an amount not to exceed ten
92 thousand dollars per violation or shall be imprisoned in

93 jail for a period not to exceed seventy-two hours.
94 Without limitation on any punishment or remedy,
95 criminal or civil, any person who knowingly makes,
96 participates in, transports, imports or receives such a
97 direct shipment constitutes an act that is an unfair trade
98 practice.

§60-8-7. Records; inspection.

1 Every person who sells or ships wine as a direct
2 shipper to West Virginia adult residents or who sells or
3 ships wine to a distributor, and every distributor shall
4 maintain records of all sales, shipments and deliveries,
5 including invoices, records, receipts, bills of lading and
6 other pertinent papers required by the commissioner.
7 All such records shall be preserved for at least two
8 years. The Tax Commissioner or the commissioner, or
9 both, may inspect the books, accounts and records of
10 any licensee and examine, under oath, any officer, agent
11 or employee of any licensee or any person engaged in
12 the business of selling, shipping or delivering wine to a
13 distributor. The Tax Commissioner or the
14 commissioner, or both, may require the production,
15 within this state at the time and place the Tax
16 Commissioner or the commissioner, or both, may
17 designate, of any books, accounts, papers or records
18 kept within or without the state, or verified copies in
19 lieu thereof, in order that an examination thereof may
20 be made by the Tax Commissioner, the commissioner or
21 their duly designated agents.

§60-8-16. Application for license.

1 Any person desiring a license under this article shall
2 file a written application for a license with the
3 commissioner and in the application shall state under
4 oath:

5 (1) The name of the applicant, including his or her
6 trade name if any, his or her address and the length of
7 his or her residence within this state;

8 (2) The address of the place of business for which the
9 license is desired, or other description that definitely
10 locates it; and that the place of business conforms to all
11 health and fire laws and regulations applicable thereto;

12 (3) The name of the owner of the premises upon which
13 the business is to be conducted and, if the owner is not
14 the applicant, that such applicant is the bona fide lessee
15 of the business;

16 (4) If the application is for a retailer's license, that the
17 applicant is the proprietor or owner of a bona fide
18 grocery store, private wine bed and breakfast, private
19 wine restaurant, private wine spa or wine specialty
20 shop;

21 (5) That the applicant intends to carry on the business
22 authorized by the license for himself or herself or under
23 his or her immediate supervision or direction;

24 (6) That the applicant is a citizen of the United States;

25 (7) That the applicant is an actual bona fide resident
26 of the State of West Virginia, except for those
27 applicants applying for a supplier's license or a direct
28 shipper's license;

29 (8) That the applicant is not less than eighteen years of
30 age;

31 (9) That the applicant has not been convicted of a
32 felony or other crime involving moral turpitude within
33 the three years next preceding the filing of the
34 application; and that he or she has not, within the two
35 years next preceding the filing of the application, been
36 convicted of violating the liquor laws of any state or of
37 the United States;

38 (10) That the applicant has not during the five years
39 next preceding the date of said application had any
40 license revoked under this chapter or under the liquor
41 laws of any other state;

42 (11) If the applicant is a firm, association or
43 partnership, the application shall state the matters
44 required in subdivisions (6), (7), (8), (9) and (10), with
45 respect to each of the members thereof, and each of said
46 members must meet all the requirements in said
47 subdivisions;

48 (12) If the applicant is a corporation, organized or
49 authorized to do business in this state, the application
50 shall state the matters required in subdivisions (6), (7),
51 (8), (9) and (10), with respect to each of the officers and
52 directors thereof, and any stockholder owning twenty
53 percent or more of the stock of such corporation and the
54 persons who conduct and manage the licensed premises
55 for the corporation. Each of said individuals must meet
56 all the requirements provided in those subdivisions
57 except that the requirements as to citizenship and
58 residence shall not apply to the officers, directors and
59 stockholders of a corporation applying for a retailer's
60 license; and

61 (13) Any other information that the commissioner may
62 reasonably require.

63 The foregoing statements required in an application
64 shall constitute mandatory prerequisites for the
65 issuance of a license.

66 The application must be verified by the owner, or each
67 member of the firm, each partner, if a partnership, each
68 member of the governing board, if an association, or
69 each officer and director, if a corporation: *Provided*,
70 That the application of a corporation applying for a
71 retailer's license need be verified only by its president or
72 vice president.

**§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.**

1 (a) The commissioner may on his or her own motion,
2 or shall on the sworn complaint of any person, conduct

3 an investigation to determine if any provisions of this
4 article or any rule promulgated or any order issued by
5 the commissioner has been violated by any licensee.
6 After investigation, the commissioner may impose
7 penalties and sanctions as set forth below.

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

14 (A) Revoke the licensee's license;

15 (B) Suspend the licensee's license for a period
16 determined by the commissioner not to exceed twelve
17 months; or

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

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

23 (2) If the commissioner finds that a licensee has
24 willfully violated any provision of this article or any
25 rule promulgated or any order issued by the
26 commissioner, the commissioner shall revoke the
27 licensee's license.

28 (b) If a supplier or distributor fails or refuses to keep
29 in effect the bond required by section twenty-nine of
30 this article, the commissioner shall automatically
31 suspend the supplier or distributor's license until the
32 bond required by section twenty is furnished to the
33 commissioner, at which time the commissioner shall
34 vacate the suspension.

35 (c) Whenever the commissioner refuses to issue a
36 license, or suspends or revokes a license, places a
37 licensee on probation or imposes a monetary penalty, he

38 or she shall enter an order to that effect and cause a
39 copy of the order to be served in person or by certified
40 mail, return receipt requested, on the licensee or
41 applicant.

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

62 (e) Upon receipt of a timely served written demand for
63 a hearing, the commissioner shall immediately set a date
64 for the hearing and notify the person demanding the
65 hearing of the date, time and place of the hearing, which
66 shall be held within thirty days after receipt of the
67 demand. At the hearing the commissioner shall hear
68 evidence and thereafter enter an order supporting by
69 findings of facts, affirming, modifying or vacating the
70 order. Any such order is final unless vacated or
71 modified upon judicial review thereof.

72 (f) The hearing and the administrative procedure prior
73 to, during and following the hearing shall be governed
74 by and in accordance with the provisions of article five,
75 chapter twenty-nine-a of this code.

76 (g) Any applicant or licensee adversely affected by an
77 order entered following a hearing has the right of
78 judicial review of the order in accordance with the
79 provisions of section four, article five, chapter twenty-
80 nine-a of this code in the circuit court of Kanawha
81 County, West Virginia.

82 (h) The judgment of the Kanawha County circuit court
83 reviewing the order of the commissioner is final unless
84 reversed, vacated or modified on appeal to the Supreme
85 Court of Appeals in accordance with the provisions of
86 section one, article six, chapter twenty-nine-a of this
87 code.

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

§60-8-19. To whom licensed manufacturer may sell.

1 A licensed manufacturer who is licensed as a supplier
2 of wine, as defined in this article, may sell such wines in
3 this state only to the commissioner and to distributors
4 as defined in this article. Such manufacturers may sell
5 such wine outside of this state for use or resale outside
6 this state. The provisions of this section shall not apply
7 to farm wineries as defined by section five-a, article one
8 of this chapter.

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

2 (a) For a supplier or distributor to sell or deliver wine
3 purchased or acquired from any source other than a
4 person registered under the provisions of section six of
5 this article or for a retailer to sell or deliver wine
6 purchased or acquired from any source other than a
7 licensed distributor or a farm winery as defined in
8 section five-a, article one of this chapter;

9 (b) Unless otherwise specifically provided by the
10 provisions of this article, for a licensee under this article
11 to acquire, transport, possess for sale or sell wine other
12 than in the original package;

13 (c) For a licensee, his or her servants, agents or
14 employees to sell, furnish or give wine to any person less
15 than twenty-one years of age, or to a mental
16 incompetent or person who is physically incapacitated
17 due to the consumption of alcoholic liquor or the use of
18 drugs: *Provided*, That the provisions of section twenty-
19 five-a, article three-a of this chapter shall apply to sales
20 of wine;

21 (d) For a licensee to permit a person who is less than
22 eighteen years of age to sell, furnish or give wine to any
23 person;

24 (e) For a supplier or a distributor to sell or deliver any
25 brand of wine purchased or acquired from any source
26 other than the primary source of supply of the wine
27 which granted the distributor the right to sell the brand
28 at wholesale. For the purposes of this article, "primary
29 source of supply" means the vintner of the wine, the
30 importer of a foreign wine who imports the wine into
31 the United States, the owner of a wine at the time it
32 becomes a marketable product, the bottler of a wine or
33 an agent specifically authorized by any of the above-
34 enumerated persons to make a sale of the wine to a West
35 Virginia distributor: *Provided*, That no retailer shall sell
36 or deliver wine purchased or acquired from any source
37 other than a distributor or farm winery licensed in this
38 state: *Provided, however*, That nothing herein is
39 considered to prohibit sales of convenience between
40 distributors licensed in this state wherein one
41 distributor sells, transfers or delivers to another
42 distributor a particular brand or brands for sale at
43 wholesale, of which brand or brands the other
44 distributor has been authorized by a licensed supplier to
45 distribute. The commissioner shall promulgate rules
46 necessary to carry out the provision of this subsection;

47 (f) For a person to violate any reasonable rule

48 promulgated by the commissioner under this article;

49 (g) Nothing in this article, nor any rule or regulation
50 of the commissioner, shall prevent or be considered to
51 prohibit any licensee from employing any person who is
52 at least eighteen years of age to serve in any licensee's
53 lawful employment, including the sale or delivery of
54 wine under the provisions of this article. With the prior
55 approval of the commissioner, a licensee whose
56 principal business is the sale of food or consumer goods
57 or the providing of recreational activities, including, but
58 not limited to, nationally franchised fast food outlets,
59 family-oriented restaurants, bowling alleys, drug stores,
60 discount stores, grocery stores and convenience stores,
61 may employ persons who are less than eighteen years of
62 age but at least sixteen years of age: *Provided*, That the
63 person's duties may not include the sale or delivery of
64 nonintoxicating beer or alcoholic liquors: *Provided*,
65 *however*, That the authorization to employ persons
66 under the age of eighteen years shall be clearly
67 indicated on the licensee's license.

§60-8-23. Duties and powers of commissioner; rules.

1 (a) The commissioner is authorized:

2 (1) To enforce the provisions of this article.

3 (2) To enter the premises of any licensee at reasonable
4 times for the purpose of inspecting the premises and
5 determining the compliance of the licensee with the
6 provisions of this article and any rules promulgated by
7 the commissioner.

8 (3) In addition to rules relating to the tax imposed by
9 section four of this article or otherwise authorized by
10 this article, to promulgate reasonable rules as he deems
11 necessary for the execution and enforcement of the
12 provisions of this article, which may include, but shall
13 not be limited to:

14 (A) The transport, use, handling, service and sale of
15 wine;

16 (B) Establishing standards of identity, quality and
17 purity to protect the public against wine containing
18 deleterious, harmful or impure substances or elements
19 and against spurious or imitation wines and wines unfit
20 for human consumption; and

21 (C) Restricting the content of wine advertising so as to
22 prohibit false or misleading claims, or depictions or
23 descriptions of wine being consumed irresponsibly or
24 immoderately, or advertising presentations designed to
25 appeal to persons below the legal drinking age:
26 *Provided*, That the commissioner shall not promulgate
27 any rule which prohibits the advertising of a particular
28 brand or brands of wine and the price thereof: *Provided*,
29 *however*, That price shall not be advertised in a medium
30 of electronic communication subject to the jurisdiction
31 of the federal communications commission.

32 (4) To issue subpoenas and subpoenas duces tecum for
33 the purpose of conducting hearings under the provisions
34 of section twelve of this article, which subpoenas and
35 subpoenas duces tecum shall be issued in the time, for
36 the fees, and shall be enforced in the manner specified
37 in section one, article five, chapter twenty-nine-a of this
38 code with like effect as if said section was set forth in
39 extenso in this subdivision.

40 (b) The authority granted in this subsection and
41 subsections (a) and (d) of this section may also be
42 exercised by the duly authorized or designated agents of
43 the commissioner.

44 (c) Except as may be in this article to the contrary, the
45 commissioner shall not have authority by rule or
46 otherwise to regulate markups, prices, discounts,
47 allowances or other terms of sale at which wine may be
48 purchased or sold by wine distributors or licensees
49 authorized to sell wine at retail but nothing herein shall
50 be deemed to authorize or permit any discriminatory
51 practice prohibited by subsection (a), section thirty-one
52 of this article or any other discriminatory practice.

53 (d) All rules promulgated by the commissioner

54 pursuant to this article shall be so promulgated in
55 accordance with the provisions of chapter twenty-nine-
56 a of this code. The rules promulgated pursuant to the
57 prior enactment of this article and not disapproved by
58 the Legislature shall remain in full force and effect to
59 the extent that such rules are not abrogated and made
60 null and void by the reenactment of this sections of this
61 article during the regular session of the Legislature for
62 the year one thousand nine hundred eighty-six. Any
63 rule which is inconsistent or contrary in any way to any
64 provision of this article now or hereafter enacted are
65 null and void.

§60-8-24. Disposition of revenue.

1 (a) The first two hundred thousand dollars of fees
2 collected under the provisions of this article during each
3 fiscal year shall be deposited into a special revolving
4 fund designated the Tax Commissioner's Wine Tax
5 Administration Fund, which fund is hereby created in
6 the State Treasury. The Tax Commissioner's Wine Tax
7 Administration Fund shall be used by the Tax
8 Commissioner to administer and support direct and
9 indirect costs of the Tax Division for administration,
10 collection, including compliance enforcement, auditing
11 and distribution of taxes on wine imposed by this code
12 and for which the Tax Commissioner has
13 administration, collection, compliance enforcement,
14 auditing or distribution functions or responsibilities.

15 (b) After collection and deposit of the first two
16 hundred thousand dollars, as specified in subsection (a)
17 of this section, all fees collected by the Alcohol Beverage
18 Control Commissioner under the provisions of this
19 article shall next be deposited in the State Treasury and
20 credited to a special fund to be known as the Wine
21 License Special Fund. All moneys in the Wine License
22 Special Fund may be expended only by the Alcohol
23 Beverage Control Commissioner for the administration
24 of the provisions of this article or, to the extent of any
25 excess, for the administration of this chapter or as may
26 be appropriate by law.

27 (c) The liter tax imposed and collected by the Tax
28 Commissioner under the provisions of this article shall
29 be paid into the State Treasury and deposited in the
30 General Revenue Fund of the state.

31 (d) All moneys collected by the alcohol beverage
32 control commissioner and the tax commissioner under
33 the provisions of this article shall be remitted to the
34 State Treasury monthly within fifteen days after the end
35 of each month.

§60-8-25. Criminal penalties; public nuisances.

1 (a) Any person who violates any provision of this
2 article or who makes any false statement concerning
3 any material fact in submitting application for license
4 or for a renewal of a license or in any hearing
5 concerning the suspension or revocation thereof, or who
6 commits any of the acts herein declared to be unlawful,
7 is guilty of a misdemeanor and, upon conviction thereof,
8 shall for each offense be fined not less than one hundred
9 dollars nor more than one thousand dollars, or
10 imprisoned in the county jail not less than thirty days
11 nor more than six months, or both fined and
12 imprisoned. Magistrate courts shall have concurrent
13 jurisdiction with the circuit court for the trial of all
14 misdemeanors arising under this article.

15 (b) The provisions of sections sixteen and seventeen,
16 article six of this chapter shall apply to persons
17 violating the provisions of this article to the same extent
18 as if such provisions were set forth in extenso herein.

§60-8-26. Forfeiture of bond.

1 On conviction of a violation of any provision of this
2 article, upon the revocation of a license in accordance
3 with section eighteen of this article or upon finding of
4 failure of a taxpayer to pay all taxes prescribed by
5 section four of this article, which conviction, revocation
6 or finding has become final, the licensee, former licensee
7 or company registered and licensed as a supplier or
8 distributor, as the case may be, shall forfeit any bond

9 required by section twenty-nine of this article. The
10 penal sum of any bond forfeited shall forthwith be paid
11 to the State Treasurer and credited to the General
12 Revenue Fund of this state. Such sum may be collected
13 by an action at law or other appropriate remedy.

PART III. WINE DISTRIBUTION.

§60-8-28. Wine brand licensing and registration and review of wine labels.

1 Every supplier offering wine for sale under this article
2 shall register with the commissioner each wine brand
3 offered for sale in the state and shall pay a fee of one
4 hundred dollars for the registration of such wine brand
5 for three years, such fee shall be returned to the supplier
6 if the wine is not registered for sale. No wine brand
7 may be sold under this article unless all of such wine
8 brand's labels intended for sale in the state have been
9 registered and reviewed by the commissioner. Every
10 supplier offering various wine labels of a registered and
11 reviewed wine brand for sale in the state shall submit
12 all of the wine brand's labels intended for sale in the
13 state for registration prior to the sale of such wine labels
14 in the state for no additional fees. After the expiration
15 of three years, the supplier may renew the registered
16 wine brand by paying a one hundred-dollar renewal fee
17 for three more years and every three years thereafter.
18 Prior to registration of any wine labels, the
19 commissioner shall review the wine labels. This review
20 shall include, but not be limited to, a review of the
21 alcohol content, corporate or product information,
22 marketing and advertising so that the wine label is not
23 intended to be marketed to persons less than twenty-one
24 years of age. The commissioner shall remove all
25 nonrenewed wine labels and any licensee who sells wine
26 with nonrenewed wine labels shall be subject to the
27 penalties under section eighteen of this article. Failure
28 to register, obtain certification and pay the annual fee
29 for a wine brand and failure to register the wine brand's
30 labels will subject the supplier to penalties under
31 section eighteen of this article.

§60-8-29. Bond required of distributors and suppliers.

1 Each applicant for a distributor's license or a
2 supplier's license shall furnish at the time of application
3 a bond with a corporate surety authorized to transact
4 business in this state, payable to the state, and
5 conditioned on the payment of all taxes and fees herein
6 prescribed and on the faithful performance of and
7 compliance with the provisions of this article.

8 The penal sum of the bond for distributors shall be ten
9 thousand dollars and the penal sum of the bond for
10 suppliers shall be ten thousand dollars. Each
11 distributor shall be required to furnish separate bond
12 for each location or separate place of business from
13 which wine is distributed, sold or delivered. Revocation
14 or forfeiture of the bond furnished for any such location
15 may, in the discretion of the commissioner, cause the
16 revocation or forfeiture of all such bonds furnished by
17 the distributor suffering such revocation or forfeiture.

§60-8-30. Exclusive franchise agreements prohibited.

1 It shall be illegal for any manufacturer, winery, farm
2 winery or supplier to enter into any exclusive franchise
3 agreement with any distributor whereby any such
4 distributor is given the exclusive right within this state
5 or in any given territory within this state to distribute
6 the product or products of such manufacturer which are
7 to be sold or distributed pursuant to the provisions of
8 this article. Further, all agreements between a
9 manufacturer, winery, farm winery or supplier and a
10 distributor must be in writing and on file with the
11 commissioner and all such agreements must provide for
12 termination of either party provided that notice of
13 termination is provided in writing and by certified mail
14 to the commissioner and all parties to the agreement
15 ninety days prior to the termination date. Once the
16 notice has been received by either party, the distributor
17 shall: (1) Use the ninety-day period to deplete such
18 distributor's affected wine inventory; or (2) reach some
19 agreement with the manufacturer, winery, farm winery
20 or supplier to return unused salable wine inventory or

21 receive payment for unused salable wine inventory. No
22 new distributor shall be appointed until the conclusion
23 of the ninety days or as the parties have otherwise
24 agreed to complete the termination. For the purposes of
25 this article "salable" shall mean inventory fit for human
26 consumption or as otherwise determined by the
27 commissioner.

§60-8-31. Other unlawful acts.

1 It is unlawful:

2 (a) For a distributor to discriminate in price, sales
3 agreements, terms or services offered to retailers,
4 licensees or to any licensee under article seven of this
5 chapter and further it is unlawful for a supplier to
6 discriminate against a distributor in price, sales
7 agreements, terms or services. "Discriminate", as used
8 in this section, means the granting of more favorable
9 prices, agreements, terms or services to one person than
10 to another.

11 (b) For a distributor, his or her agents, servants or
12 employees to transport or deliver wine to any retail
13 licensee or to any licensee under article seven of this
14 chapter on Sunday or any general election day.

15 (c) For a distributor to sell wines authorized by this
16 article to licensees under article seven of this chapter at
17 a price which is greater than the price at which such
18 wines are sold and distributed to retailers under this
19 article.

PART IV. WINE RETAILERS.

§60-8-32. Where wine may be sold at retail.

1 Except as to sales permitted to be made by wineries or
2 farm wineries that obtain a retailer's license, private
3 wine bed and breakfasts, private wine restaurants and
4 private wine spas, wine sold pursuant to this article may
5 be sold at retail only by the commissioner and in and by

6 retailers and wine specialty shops as defined by section
7 two of this article.

§60-8-34. When retail sales prohibited.

1 It shall be unlawful for a retailer, farm winery, wine
2 specialty shop retailer, private wine bed and breakfast,
3 private wine restaurant or private wine spa licensee, his
4 or her servants, agents or employees to sell or deliver
5 wine between the hours of two o'clock a. m. and one
6 o'clock p. m. on Sundays, or between the hours of two
7 o'clock a. m. and seven o'clock a. m. on weekdays and
8 Saturdays.

Enr. Rev. Com. Sub. for S. B. No. 712] 50

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

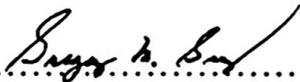

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Chairman Senate Committee

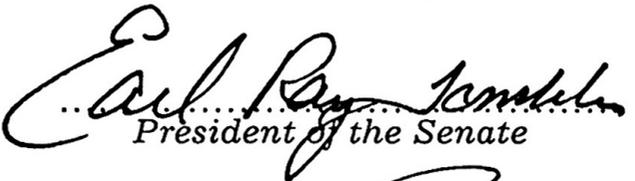

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:40 pm