WEST VIRGINIA LEGISLATURE
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.]
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 importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

10 (b) Exceptions to confidentiality. —

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

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

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

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

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

(F) More than one million dollars.

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

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

(B) A summary of the compromise;

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

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

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

(3) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax
(4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may enter into written exchange of information agreements with the commissioners of Labor, Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and receive timely return information: Provided, That the Tax Commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding further agencies with which written exchange of information agreements may be sought: Provided, however, That the Tax Commissioner may not promulgate emergency rules regarding further agencies with which written exchange of information agreements may be sought. The agreements shall be published in the State Register and shall only be for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information so disclosed shall remain confidential in the hands of the other division to the extent provided by section five-d of this article and by other applicable federal or state laws.

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

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

(B) The type of business activity and organization of those businesses. Disclosure of this information shall begin as soon as practicable after the effective date of
this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder shall otherwise remain confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

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

(d) Federal and state return information confidential. — Notwithstanding any other provisions of this section or of this code, no return information made available to the Tax Commissioner by the Internal Revenue Service or department or agency of any other state may be disclosed to another person in any manner inconsistent with the provisions of Section 6103 of the Internal Revenue Code of 1986, as amended, or of the other states' confidentiality laws.
CHAPTER 17. ROAD AND HIGHWAYS.

ARTICLE 22. OUTDOOR ADVERTISING.

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

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

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter: "Farm winery" means an establishment where in any year fifty thousand gallons or less of wine and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products containing sugar and where port, sherry and Madeira wine may also be manufactured,
with twenty-five percent of such raw products being 
produced by the owner of such farm winery on the 
premises of that establishment and no more than 
twenty-five percent of such produce originating from 
any source outside this state. Any port, sherry or 
Madeira wine manufactured by a winery or a farm 
winery must not exceed an alcoholic content of twenty-
two percent alcohol by volume and shall be matured in 
wooden barrels or casks.

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

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSES.

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

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

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

The commission may grant licenses for the 
manufacture of alcoholic liquors. Separate licenses
shall be issued to the following classes of manufacturing establishments:

1. Distilleries in which only alcoholic liquors other than wine or beer is manufactured;
2. Wineries in which only wines are manufactured;
3. Breweries in which beer is manufactured;
4. Bottling plants in which beer only is bottled;
5. Industrial plants in which alcohol is distilled, manufactured or otherwise produced for scientific, chemical, mechanical or industrial purposes;
6. Farm wineries in which only wines are manufactured; and
7. Mini-distilleries in which only alcoholic liquors other than wine, beer or nonintoxicating beer are manufactured.

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

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: Provided, That a holder of a winery or a farm winery license may sell wines and a holder of a distillery or a mini-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. Hours of retail sale by a winery or a farm winery or distillery or a mini-distillery is subject to regulation by the commissioner. A winery, distillery, farm winery or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.
(a) **Sales of liquor.** — An operator of a distillery or a mini-distillery may offer liquor for retail sale to customers from the distillery or the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any liquor on the premises of the distillery or the mini-distillery.

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

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

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

(e) **Limitations on licensees.** — No distillery or mini-distillery may sell more than three thousand gallons of product at the distillery or mini-distillery location the initial two years of licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery location by two thousand gallons following the initial twenty-four month period of licensure, and may increase sales at the distillery or mini-distillery location each subsequent twenty-four
month period by two thousand gallons, not to exceed
ten thousand gallons a year of total sales at the distillery
or mini-distillery location. No licensed mini-distillery
may produce more than twenty thousand gallons per
calendar year at the mini-distillery location. No more
than one distillery or mini-distillery license may be
issued to a single person or entity and no person may
hold both a distillery and a mini-distillery license.

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

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

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

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

(d) Advertising. — A winery or farm winery may
advertise a particular brand or brands of wine produced
by it, and the price of the wine subject to federal
requirements or restrictions.
(e) Limitations on licensees. — A winery or farm winery must maintain separate winery or farm winery supplier, retailer and direct shipper licenses when acting in one or more of those capacities, and must pay all associated license fees, unless such winery or farm winery holds a license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. No more than one winery or farm winery license may be issued to a single person or entity, and no person may 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 provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

(1) Distilleries, one thousand five hundred dollars;

(2) Wineries, one thousand five hundred dollars;

(3) Breweries, one thousand five hundred dollars;

(4) Bottling plants, one hundred dollars;

(5) Wholesale druggists, fifty dollars;

(6) Institutions, ten dollars;

(7) Industrial use, fifty dollars;

(8) Industrial plants producing alcohol, two hundred fifty dollars;
§60-4-22. Wholesale representatives' licenses.

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

No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or
appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license. No member of the Legislature or the spouse of any such member may be granted a license. Nor may any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license.

In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the state capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing.
and such person’s name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

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

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

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee or his or her guests if the alcoholic liquors have been
lawfully acquired by him or her;

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

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

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

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

The provisions of this chapter may not prevent:

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

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

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

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

(5) The holder of a winery or a farm winery license from selling wine for off-premises consumption sold at retail at the winery or the farm winery, as provided in
section four, article three-b of this chapter, or for any
other person who is licensed under this chapter to sell
wine as a wine supplier or distributor; and

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

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF
ARTICLE.

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

(a) Every supplier must use a distributor to distribute
wine for retail sale in this state, except for such sales
that occur by wineries, farm wineries or suppliers
holding a direct shipper’s license or farm wineries
holding a multi-capacity farm winery license. The
provisions of Part II of this article shall have general
application to the distribution and retail sale of wine in
this state. The provisions of Part III of this article shall
relate solely to the distribution and the regulation of
suppliers and distributors of such wines as may be
permitted to be sold at retail pursuant to the provisions
of this article. The provisions of Part IV of this article
shall relate solely to the retail sale of wine in grocery
stores as the term “grocery store” is defined in this
article and the retail sale of wine in wine specialty shops
as defined in this article. In the event of any
inconsistency of any provisions of Part II and the
provisions of either Part III or Part IV of this article, the
provisions of either Part III or Part IV shall prevail to
the extent of such inconsistency.

(b) In the event of any inconsistency between any of
the provisions of this article and provisions of any other
article of this chapter or of this code, the provisions of
this article shall prevail to the extent of any such
inconsistency.
(c) To the extent the provisions of this chapter exclusive of this article may be given application without creating an inconsistency with the provisions of this article, the provisions of this chapter, exclusive of this article, shall apply to the same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

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

“Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

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

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

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

"Licensee" means the holder of a license granted under the provisions of this article.

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

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

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

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

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

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

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

"Taxpayer" means any person liable for any tax,
interest, additions to tax or penalty under the provisions
of this article and any person claiming a refund of tax.
“Varietal wine” means any wine labeled according to the grape variety from which such wine is made.

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

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

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

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

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any such activity after his
or her license has expired, been suspended or revoked.

No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant or a private wine spa.

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

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

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

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

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

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

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

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

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

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

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

(12) Three hundred dollars per year for a multi-capacity winery or farm winery license which shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper without obtaining an individual license for each capacity.
(c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

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

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

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

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

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

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

(i) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: Provided, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa or a private club may permit a person over twenty-one years of age to purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with regulations promulgated by the commissioner for the purpose of consumption of said wine off premises:
Provided, however, That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees is at least fifteen dollars: Provided further, That a licensed private wine restaurant or a private club may offer for sale for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over twenty-one years of age, as verified by the private wine restaurant or private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

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

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

(l) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.
(m) Wineries and farm wineries may advertise off premises as provided in section seven, article twenty-two, chapter seventeen of this code.

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

(o) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine when raising money for athletic, charitable, educational or religious purposes. The license application shall contain information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto.
(p) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

§60-8-4. Liter tax.

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

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

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

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

28 No wine imported, sold or distributed in this state or
sold and shipped to this state by a direct shipper shall
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
notice is mailed to such person by the commissioner of
the fact that such person has violated the provisions of
this article. During such one-year period, it shall be
unlawful for any distributor within this state to buy or
receive wine from such person or to have any dealings
with such person with respect thereto. Hearings and
appeals on such notices may be had in the same manner
as in the case of revocations of licenses under this
article.

(b) Notwithstanding the provisions of this chapter or
any other law to the contrary, any person or winery that
is currently licensed and in good standing in its domicile
state as a winery, farm winery, supplier or retailer of
wine and who obtains a direct shipper's license from the
commissioner, as provided in this chapter, may ship up
to a maximum of two cases of wine per month directly
to adult West Virginia residents who are twenty-one
years of age or over, for such adult resident's personal
use and consumption and not for resale. Licensed direct
shippers must maintain accurate records of all
shipments sent to West Virginia residents. All
shipments of wine into West Virginia by licensed direct
shippers shall be made by a licensed and bonded
shipping carrier. Direct shippers and their carriers shall
not ship wine to areas of West Virginia where wine may
not be lawfully sold by county, local or municipal law.
Any holder of a direct shipper's license must collect all
taxes, sales taxes, municipal taxes and the liter tax due
to West Virginia, remit all sales, municipal taxes and the
liter tax to the tax commissioner at the close of each
month and file a monthly return reflecting the taxes
paid for all sales and shipments to residents in West
Virginia. The commissioner shall prescribe the forms to
be used to file the monthly returns. The shipping
container of any wine sent into or out of this state under
this subsection shall be clearly and conspicuously
labeled to indicate that the package cannot be delivered
to: (1) Any person under the age of twenty-one; (2) to an
intoxicated person; or (3) to a person physically
incapacitated due to the consumption of
nonintoxicating beer, wine or alcoholic liquors or the
use of drugs; and (4) the carriers are required to obtain
a written or electronic signature upon delivery of an
adult resident who the carrier verifies is at least twenty-
one years of age or older and if the carrier is not able to
obtain a signature of a verified adult resident at least
twenty-one years of age or older, then the carrier may
not complete the delivery of the wine shipment. Failure
of any holder of a direct shipper’s license or such
licensee’s carrier to abide by the provisions of this
chapter and the commissioner’s rules may subject the
direct shipper to the penalties available to the
commissioner under section eighteen of this article.

§60-8-6a. Direct shipper’s license.

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

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

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

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

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

(5) Provide the commissioner a true copy of its current
alcoholic beverage license issued in the state of
domicile, proving that the direct shipper is licensed in
its state of domicile as a winery, farm winery, supplier
or retailer of wine;
(6) Obtain from the commissioner a direct shipper's license;

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

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

(b) All direct shipper licensees shall:

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

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

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

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

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

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

(7) Pay to the Tax Commissioner all sales taxes, municipal taxes and the liter tax due on sales and shipments to residents of West Virginia in the preceding month, the amount of such taxes to be calculated as the
sales were made in West Virginia at the location where
delivery is made;

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

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

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

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

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

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

(f) Shipments of wine direct to consumers in West
Virginia from persons who do not possess a current
direct shipper's license or other permit or license from
the commissioner are prohibited. Any person who
knowingly makes, participates in, transports, imports or
receives such an unlicensed and unauthorized direct
shipment is guilty of a felony and shall upon conviction
thereof, be fined in an amount not to exceed ten
thousand dollars per violation or shall be imprisoned in
§60-8-7. Records; inspection.

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

§60-8-16. Application for license.

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

(1) The name of the applicant, including his or her trade name if any, his or her address and the length of his or her residence within this state;
(2) The address of the place of business for which the license is desired, or other description that definitely locates it; and that the place of business conforms to all health and fire laws and regulations applicable thereto;

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

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

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

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

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

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

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

(10) That the applicant has not during the five years next preceding the date of said application had any license revoked under this chapter or under the liquor laws of any other state;
(11) If the applicant is a firm, association or partnership, the application shall state the matters required in subdivisions (6), (7), (8), (9) and (10), with respect to each of the members thereof, and each of said members must meet all the requirements in said subdivisions;

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

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

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

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

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct
an investigation to determine if any provisions of this
article or any rule promulgated or any order issued by
the commissioner has been violated by any licensee.
After investigation, the commissioner may impose
penalties and sanctions as set forth below.

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

(A) Revoke the licensee's license;

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

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

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

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

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

(c) Whenever the commissioner refuses to issue a
license, or suspends or revokes a license, places a
licensee on probation or imposes a monetary penalty, he
or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

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

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

(f) The hearing and the administrative procedure prior to, during and following the hearing shall be governed by and in accordance with the provisions of article five, chapter twenty-nine-a of this code.
(g) Any applicant or licensee adversely affected by an order entered following a hearing has the right of judicial review of the order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code in the circuit court of Kanawha County, West Virginia.

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

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

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

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

§60-8-20. Unlawful acts generally.

It shall be unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of section six of this article or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in section five-a, article one of this chapter;
(b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale or sell wine other than in the original package;

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

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

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

(f) For a person to violate any reasonable rule
promulgated by the commissioner under this article;

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

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

(a) The commissioner is authorized:

(1) To enforce the provisions of this article.

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

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

(A) The transport, use, handling, service and sale of wine;
(B) Establishing standards of identity, quality and purity to protect the public against wine containing deleterious, harmful or impure substances or elements and against spurious or imitation wines and wines unfit for human consumption; and

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

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

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

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

(d) All rules promulgated by the commissioner
pursuant to this article shall be so promulgated in accordance with the provisions of chapter twenty-nine-a of this code. The rules promulgated pursuant to the prior enactment of this article and not disapproved by the Legislature shall remain in full force and effect to the extent that such rules are not abrogated and made null and void by the reenactment of this sections of this article during the regular session of the Legislature for the year one thousand nine hundred eighty-six. Any rule which is inconsistent or contrary in any way to any provision of this article now or hereafter enacted are null and void.

§60-8-24. Disposition of revenue.

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

(b) After collection and deposit of the first two hundred thousand dollars, as specified in subsection (a) of this section, all fees collected by the Alcohol Beverage Control Commissioner under the provisions of this article shall next be deposited in the State Treasury and credited to a special fund to be known as the Wine License Special Fund. All moneys in the Wine License Special Fund may be expended only by the Alcohol Beverage Control Commissioner for the administration of the provisions of this article or, to the extent of any excess, for the administration of this chapter or as may be appropriate by law.
(c) The liter tax imposed and collected by the Tax Commissioner under the provisions of this article shall be paid into the State Treasury and deposited in the General Revenue Fund of the state.

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

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

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

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

§60-8-26. Forfeiture of bond.

On conviction of a violation of any provision of this article, upon the revocation of a license in accordance with section eighteen of this article or upon finding of failure of a taxpayer to pay all taxes prescribed by section four of this article, which conviction, revocation or finding has become final, the licensee, former licensee or company registered and licensed as a supplier or distributor, as the case may be, shall forfeit any bond
required by section twenty-nine of this article. The penal sum of any bond forfeited shall forthwith be paid to the State Treasurer and credited to the General Revenue Fund of this state. Such sum may be collected 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.

Every supplier offering wine for sale under this article shall register with the commissioner each wine brand offered for sale in the state and shall pay a fee of one hundred dollars for the registration of such wine brand for three years, such fee shall be returned to the supplier if the wine is not registered for sale. No wine brand may be sold under this article unless all of such wine brand's labels intended for sale in the state have been registered and reviewed by the commissioner. Every supplier offering various wine labels of a registered and reviewed wine brand for sale in the state shall submit all of the wine brand's labels intended for sale in the state for registration prior to the sale of such wine labels in the state for no additional fees. After the expiration of three years, the supplier may renew the registered wine brand by paying a one hundred-dollar renewal fee for three more years and every three years thereafter. Prior to registration of any wine labels, the commissioner shall review the wine labels. This review shall include, but not be limited to, a review of the alcohol content, corporate or product information, marketing and advertising so that the wine label is not intended to be marketed to persons less than twenty-one years of age. The commissioner shall remove all nonrenewed wine labels and any licensee who sells wine with nonrenewed wine labels shall be subject to the penalties under section eighteen of this article. Failure to register, obtain certification and pay the annual fee for a wine brand and failure to register the wine brand's labels will subject the supplier to penalties under section eighteen of this article.
§60-8-29. Bond required of distributors and suppliers.

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

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

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

It shall be illegal for any manufacturer, winery, farm winery or supplier to enter into any exclusive franchise agreement with any distributor whereby any such distributor is given the exclusive right within this state or in any given territory within this state to distribute the product or products of such manufacturer which are to be sold or distributed pursuant to the provisions of this article. Further, all agreements between a manufacturer, winery, farm winery or supplier and a distributor must be in writing and on file with the commissioner and all such agreements must provide for termination of either party provided that notice of termination is provided in writing and by certified mail to the commissioner and all parties to the agreement ninety days prior to the termination date. Once the notice has been received by either party, the distributor shall: (1) Use the ninety-day period to deplete such distributor's affected wine inventory; or (2) reach some agreement with the manufacturer, winery, farm winery or supplier to return unused salable wine inventory or
receive payment for unused salable wine inventory. No new distributor shall be appointed until the conclusion of the ninety days or as the parties have otherwise agreed to complete the termination. For the purposes of this article "salable" shall mean inventory fit for human consumption or as otherwise determined by the commissioner.

§60-8-31. Other unlawful acts.

It is unlawful:

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

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

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

PART IV. WINE RETAILERS.

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

Except as to sales permitted to be made by wineries or farm wineries that obtain a retailer's license, private wine bed and breakfasts, private wine restaurants and private wine spas, wine sold pursuant to this article may be sold at retail only by the commissioner and in and by
§60-8-34. When retail sales prohibited.

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

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker House of Delegates

The within is approved this

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Governor