

HB 105

FILED

2009 JUN 17 PM 4: 32

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST EXTRAORDINARY SESSION, 2009



**ENROLLED**

**House Bill No. 105**

(By Mr. Speaker, Mr. Thompson)  
[By Request of the Executive]



Passed June 2, 2009

In Effect from Passage

**ENROLLED**

**FILED**

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**H. B. 105**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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(BY MR. SPEAKER, MR. THOMPSON)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed June 2, 2009; in effect from passage.]

AN ACT to amend and reenact §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60-3A-10d, all relating to the issuance of retail licenses for the sale of liquor; classifying retail licenses for the sale of liquor; setting forth legislative findings; defining certain terms; authorizing the Alcohol Beverage Control Commissioner to issue retail licenses for the sale of liquor; establishing certain standards for the issuance of licenses within market zones; limiting the issuance of retail licenses to operate mixed retail liquor outlets; authorizing the commissioner to adopt certain standards for retail outlets; authorizing the Retail Liquor Licensing Board to consider certain factors when authorizing additional retail outlets; increasing the maximum percentage of retail licenses a person may own; setting forth bidding procedures; setting license fees; adding citizenship and character requirements for license applicants; authorizing credit and background checks on license

applicants; providing a purchase option for active retail licensees seeking to operate a freestanding liquor retail outlet; providing for financing for the purchase of a retail license for a freestanding liquor retail outlet; and authorizing legislative and emergency rules.

*Be it enacted by the Legislature of West Virginia:*

That §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-3A-10d, all to read as follows:

**ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

**§60-3A-2. Legislative findings and declaration; legislative purpose.**

1       (a) The Legislature hereby finds and declares that the sale  
 2       of liquor at retail should no longer be by the state, but rather  
 3       by retail licensees; that there is a need for the state to control  
 4       the wholesale sales of liquor; that the health and welfare of  
 5       the citizens of this state will be adequately protected by the  
 6       licensing and control of such retail licensees; that the sale of  
 7       liquor through retail licensees will satisfy reasonable  
 8       consumer concerns of availability and price; and that the  
 9       operation and efficiency of state government will be  
 10      improved by removing the state from the retail sale of liquor  
 11      and permitting sales of liquor by retail licensees under  
 12      licenses issued by the state together with strict enforcement  
 13      of laws and rules relating to the sale of liquor.

14      (b) It is the purpose of the Legislature in providing for the  
 15      retail sale of liquor to:

16 (1) Continue revenue to the state from the wholesale sale  
17 of liquor by requiring all retail licensees to purchase all liquor  
18 (other than wine) from the commissioner and by further  
19 requiring all private clubs licensed under the provisions of  
20 article seven of this chapter to purchase all liquor (other than  
21 wine) from retail licensees;

22 (2) Provide a system of controls, through limitations on  
23 the numbers of retail outlets and application of the police  
24 power of the state, to discourage the intemperate use of  
25 liquor;

26 (3) Preserve and continue the tax base of counties and  
27 municipalities derived from the retail sale of liquor;

28 (4) Obtain revenue for the state from the issuance of retail  
29 licenses;

30 (5) Facilitate the responsible marketing and growth of  
31 existing retail outlets; and

32 (6) Encourage the sale of liquor in freestanding liquor  
33 retail outlets that offer a wide variety of liquor at competitive  
34 prices.

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

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

4 (1) The provisions of this article as enacted during the  
5 regular session of the Legislature in 1990 were intended to  
6 require that all licenses issued for the retail sale of liquor  
7 expire as of July 1, 2000, and that the issuance of retail

8 licenses for the ten-year period beginning July 1, 2000, and  
9 for each ten-year period thereafter, be based on sealed  
10 competitive bids except as provided in section ten-b of this  
11 article;

12 (2) It is the intention of the Legislature to provide that all  
13 retail licenses issued beginning July 1, 2000, expire ten years  
14 from the date of issuance and that every ten years the  
15 issuance of retail licenses be based on competitive bids,  
16 except as provided in section ten-b of this article;

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

19 (4) Many of those persons who currently hold retail  
20 licenses have not only provided the services to the public  
21 contemplated by this article, but in many instances have  
22 provided employment, invested significant time and money  
23 into their businesses and otherwise made substantial  
24 contributions to the economic and civic development of the  
25 communities in which they conduct business, and therefore,  
26 current retail licensees should be afforded special  
27 consideration if their bids for the licenses issued for the  
28 ten-year period beginning July 1, 2000, and July 1 every ten  
29 years thereafter, be unsuccessful;

30 (5) Those persons who are issued a retail license for the  
31 ten-year period beginning on July 1, 2000, and for any ten-  
32 year period thereafter should also be afforded special  
33 consideration if they operate or seek to operate a freestanding  
34 liquor retail outlet or if their bids for a retail license are  
35 unsuccessful; and

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

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

41 (1) Require that all licenses issued for the ten-year period  
42 beginning July 1, 2000, and for each ten-year period  
43 thereafter be based on sealed competitive bids except as  
44 provided in section ten-b of this article;

45 (2) Provide active retail licensees who operate or seek to  
46 operate a freestanding liquor retail outlet the opportunity to  
47 pay a purchase option for a Class A retail license or licenses  
48 for the ten-year period beginning July 1, 2010, and for each  
49 ten-year period thereafter;

50 (3) Provide current retail licensees who, having bid in a  
51 manner consistent with the provisions of this article, fail to  
52 submit the highest bid for licenses issued for the ten-year  
53 period beginning July 1, 2010, and for each ten-year period  
54 thereafter an additional opportunity to obtain the license; and

55 (4) Effect statutory changes to further the purposes  
56 provided in this section and section two of this article.

#### **§60-3A-4. Definitions.**

1 (a) "Active retail license" means a current license for a  
2 retail outlet that has been open and in continuous operation  
3 for a period of not less than twelve months prior to July 1,  
4 2010, or July 1 every ten years thereafter.

5 (b) "Active retail licensee" means a person who holds an  
6 active retail license at the time of the effective date of the  
7 amendments to this section during the first extraordinary  
8 session of the Legislature in 2009 or that person's successor  
9 or any person who holds an active retail license when it  
10 expires at the end of a ten-year period.

11 (c) "Applicant" means any person who elects to pay a  
12 purchase option for a Class A retail license, who bids for a  
13 retail license or who seeks the commissioner's approval to  
14 purchase or otherwise acquire a retail license from a retail  
15 licensee, in accordance with the provisions of this article.

16 (d) "Application" means the form prescribed by the  
17 commissioner which must be filed with the commissioner by  
18 any person bidding for a retail license.

19 (e) "Board" means the Retail Liquor Licensing Board  
20 created by this article.

21 (f) "Class A retail license" means a retail license  
22 permitting the retail sale of liquor at a freestanding liquor  
23 retail outlet.

24 (g) "Class B retail license" means a retail license  
25 permitting the sale of liquor at a mixed retail liquor outlet.

26 (h) "Current retail licensee" means a person who holds a  
27 retail license at the time of the effective date of the  
28 amendments to this section during the first extraordinary  
29 session of the Legislature in 2009 or that person's successor  
30 or any person who holds a retail license when it expires at the  
31 end of a ten-year period.

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

34 (j) "Executive officer" means the president or other  
35 principal officer, partner or member of an applicant or retail  
36 licensee, any vice president or other principal officer, partner  
37 or member of an applicant or retail licensee in charge of a  
38 principal business unit or division, or any other officer,  
39 partner or member of an applicant or retail licensee who  
40 performs a policy-making function.

41 (k) "Freestanding liquor retail outlet" means a retail  
42 outlet that sells only liquor, beer, nonintoxicating beer and  
43 other alcohol-related products, including tobacco-related  
44 products.

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

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

51 (n) "Mixed retail liquor outlet" means a retail outlet that  
52 sells liquor, beer, nonintoxicating beer and other alcohol-  
53 related products, including tobacco-related products, in  
54 addition to convenience and other retail products.

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

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

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

62 (r) "Retail outlet" means a specific location where liquor  
63 may be lawfully sold by a retail licensee under the provisions  
64 of this article.

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

1 (a) The board shall create, based on economic and  
2 demographic factors, market zones within the state for the  
3 issuance of Class A and Class B retail licenses.

4 (b) The commissioner shall:

5 (1) Prescribe application forms for persons desiring to  
6 acquire retail licenses and adopt an orderly procedure and  
7 timetable for investigating, processing and approving  
8 applications;

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

11 (3) Disseminate to the public information relating to the  
12 issuance of retail licenses;

13 (4) Promulgate standards for advertising the sale,  
14 availability, price and selection of liquor;

15 (5) Set minimum standards for retail outlets regarding the  
16 amount and variety of liquor a licensee must offer for sale at  
17 each retail outlet; the size, space and design of each retail  
18 outlet; the amount of inventory and displayed inventory of  
19 liquor in each retail outlet; order quantities sufficient to  
20 qualify for delivery to each retail outlet; phone, computer and  
21 Internet requirements for each retail outlet; the verification of  
22 liquor orders; liquor delivery dates and routes for each retail  
23 outlet; and such other requirements the commissioner deems  
24 necessary;

25 (6) Set minimum standards for the display of inventory  
26 in retail outlets operating pursuant to a Class A retail license  
27 which shall include, without limitation, the requirement that  
28 a minimum square footage of displayed inventory available  
29 for retail purchase at the retail outlet be composed of liquor,

30 beer and nonintoxicating beer products and that liquor, beer  
31 and nonintoxicating beer products available for sale are  
32 placed for sale throughout the entire retail area of the retail  
33 outlet including the retail floor space and shelving;

34 (7) Set minimum standards for the display of inventory  
35 in retail outlets operating pursuant to a Class B retail license  
36 which shall include, without limitation, the requirements that  
37 a minimum square footage of the displayed inventory  
38 available for purchase at the retail outlet be composed of  
39 liquor products; that liquor available for sale in the retail  
40 outlet is placed only in an area of the retail outlet that  
41 prominently displays signage identifying the area as a  
42 restricted liquor area and stating that no one under the age of  
43 twenty-one may purchase liquor; and that the area is separate  
44 from and not highly visible to persons outside of the  
45 restricted liquor area.

46 (8) Enforce the provisions of this article;

47 (9) Impose civil penalties upon retail licensees;

48 (10) Enter the retail outlet of any retail licensee at  
49 reasonable times for the purpose of inspecting the same, and  
50 determining the compliance of such retail licensee with the  
51 provisions of this article and any rules promulgated by the  
52 board or the commissioner pursuant to the provisions of this  
53 article; and

54 (11) Issue subpoenas and subpoenas duces tecum for the  
55 purpose of conducting hearings under the provisions of  
56 section twenty-six or section twenty-eight of this article,  
57 which subpoenas and subpoenas duces tecum shall be issued  
58 in the time, for the fees, and shall be enforced in the manner  
59 specified in section one, article five, chapter twenty-nine-a of  
60 this code with like effect as if such section was set forth in  
61 extenso herein.

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

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

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

73 (3) Notwithstanding any other provision of this code to  
74 the contrary, proposed legislative rules for this article filed in  
75 the State Register by September 1, 2009, may be filed as  
76 emergency rules. Such emergency rules shall include the  
77 standards, criteria and formulae or methodology utilized by  
78 the board when establishing the minimum bid for each  
79 license pursuant to section ten-b of this article.

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

1 (a) The market zones established by the board for the  
2 retail sale of liquor within this state under the enactment of  
3 this section in 1990 may not be modified by the board unless  
4 authorized by the Legislature. For each market zone  
5 established by the board, the commissioner may issue one or  
6 more Class A retail licenses and one or more Class B retail  
7 licenses within the market zone: *Provided*, That the number  
8 of Class B retail licenses to be issued by the commissioner  
9 within a market zone shall not exceed one hundred fifty  
10 percent of the number of Class A retail outlets authorized for  
11 that market zone, except as otherwise authorized by  
12 subsection (d) of this section or section twenty-seven-a of

13 this article: *Provided, however*, That, except as authorized by  
14 subsection (d) of this section or section twenty-seven-a of  
15 this article, in a market zone where the number of Class A  
16 retail licenses issued by the commissioner is an odd number,  
17 the number of Class B retail licenses which may be issued in  
18 that market zone shall be rounded up to the next highest  
19 whole number following that number which is equal to one  
20 hundred fifty percent of the number of Class A retail licenses  
21 issued by the commissioner: *Provided that*, for the ten-year  
22 period beginning July 1, 2010, the number of Class B retail  
23 licenses which are available for bid in a market zone shall not  
24 be less than the number of mixed retail outlets located in that  
25 market zone as of October 31, 2009.

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

39 (c) A person may hold one or more Class A retail licenses  
40 and one or more Class B retail licenses in a market zone or  
41 zones.

42 (d) Notwithstanding any provision of subsection (a) or  
43 (b) of this section, no later than thirty days prior to the receipt  
44 of the bids described in section ten-b of this article, the board  
45 may authorize the commissioner to issue additional Class B

46 retail licenses in a market zone for the ten-year period which  
47 begins next following July 1, where the board determines  
48 that:

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

52 (2) Economic and demographic factors clearly  
53 demonstrate the need for an additional retail outlet or outlets  
54 within the market zone to meet consumer demand; and

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

59 (e) The board shall establish the minimum bid for any  
60 additional Class B retail licenses authorized under subsection  
61 (d) of this section.

62 (f) No person may hold a combination of Class A or  
63 Class B retail licenses that, in the aggregate, authorizes the  
64 operation of more than thirty percent of the total number of  
65 retail outlets authorized under the provisions of this article to  
66 operate in this state.

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

1 (a) Prior to or simultaneously with the submission of a  
2 bid for a retail license or the payment of a purchase option for  
3 a Class A retail license, each applicant shall file an  
4 application with the commissioner, stating under oath, the  
5 following:

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

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

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

28          (4) That the applicant is a United States citizen of good  
29          moral character and, if a naturalized citizen, when and where  
30          naturalized; and, if a corporation organized and authorized to  
31          do business under the laws of this state, when and where  
32          incorporated, with the name and address of each officer; that  
33          each officer is a citizen of the United States and a person of  
34          good moral character; and if a firm, association, partnership  
35          or limited partnership, that each member is a citizen of the  
36          United States and, if a naturalized citizen, when and where  
37          naturalized, each of whom must sign the application.

38 (b) An applicant shall provide the commissioner any  
39 additional information requested by the commissioner  
40 including, but not limited to, authorization to conduct a  
41 criminal background and credit records check.

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

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

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

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

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

#### **§60-3A-10. Bidding procedure.**

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

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

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

28           (d) Each person desiring to submit a bid shall file the bid  
29 with the commissioner prior to the specified date and hour for  
30 the bid openings. The failure to deliver or the nonreceipt of  
31 a bid prior to the appointed date and hour constitutes  
32 sufficient reason for the rejection of a bid. After the award of  
33 the retail license, the commissioner shall indicate upon the  
34 successful bid that it was the successful bid. Thereafter, a  
35 copy of the bid and the bidder's application shall be  
36 maintained as a public record, shall be open to public

37 inspection in the commissioner's office and shall not be  
38 destroyed without the written consent of the Legislative  
39 Auditor.

40 (e) Prior to the issuance of the retail license to the  
41 successful bidder, the bid price and the annual retail license  
42 fee, as specified in section twelve of this article, shall be paid  
43 to the commissioner by money order, certified check or  
44 cashier's check. All retail licenses shall be signed by the  
45 commissioner in the name of the state.

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

**§60-3A-10b. Bidding procedure for licenses issued for the  
ten-year period beginning July 1, 2010;  
purchase options for bids beginning July 1,  
2010; and licenses issued for each ten-year  
period thereafter.**

1 (a) The issuance of retail licenses for the ten-year period  
2 beginning July 1, 2010, and for each ten-year period  
3 thereafter, shall be based upon sealed competitive bid in  
4 accordance with the provisions of section ten of this article  
5 except as provided in this section.

6 (b) Prior to accepting bids for retail licenses to be issued  
7 for the ten-year period beginning July 1, 2010, the board shall  
8 determine the minimum bid for each license based upon a  
9 review of inflation data, demographic data, the sales at each

10 retail outlet permitted to operate under the license and such  
11 other factors as the board may determine to generate the  
12 revenues from liquor license renewal projected by the  
13 Governor's official revenue estimates for fiscal year 2009-  
14 2010 as presented to the regular session of the Legislature in  
15 2009.

16 (c) Prior to accepting bids for retail licenses to be issued  
17 for the ten-year periods beginning July 1, 2010, and July 1  
18 every ten years thereafter, the board shall determine the  
19 minimum bid for each retail license based upon a review of  
20 the sales at each retail outlet permitted to operate under the  
21 retail license and such other factors as the board may  
22 determine to generate the revenues from retail license  
23 renewal projected by the Governor's official revenue  
24 estimates for the fiscal year preceding the expiration of the  
25 retail licenses.

26 (d)(1) Notwithstanding any provision of this article to the  
27 contrary, prior to accepting bids for retail licenses to be  
28 issued for the ten-year period beginning July 1, 2010, and  
29 every ten-year period thereafter, each active retail licensee  
30 operating or seeking to operate a freestanding liquor retail  
31 outlet shall be eligible to purchase a Class A retail license or  
32 licenses as provided in this subsection.

33 (2) At least sixty days prior to accepting bids for retail  
34 licenses to be issued for the ten-year period beginning July 1,  
35 2010, and July 1 every ten years thereafter, the board shall  
36 provide notice to each eligible retail licensee of his or her  
37 option to purchase a Class A retail license or licenses as  
38 provided in this subsection. The board shall include with this  
39 notice an explanation of the financing option provided in  
40 section ten-d of this article and a financing application form  
41 prepared by the commissioner.

42           (3) An eligible retail licensee may elect to pay a purchase  
43 option or options for each retail outlet operating under an  
44 active retail license currently held by the licensee. A retail  
45 licensee may only exercise a purchase option for the lesser of  
46 four Class A retail licenses or the number of active retail  
47 licenses currently held by the licensee.

48           (4) Each eligible retail licensee who elects to pay a  
49 purchase option shall, within thirty days prior to the  
50 acceptance of bids for the ten-year period beginning July 1,  
51 2010, and July 1 every ten years thereafter, pay to the  
52 commissioner an amount equal to ten percent over and above  
53 the minimum bid as determined by the board for each Class  
54 A retail license the retail licensee wishes to purchase or, if the  
55 retail licensee elects to take the financing option provided in  
56 section ten-d of this article, a down payment, the amount of  
57 which shall be calculated in accordance with the provisions  
58 of that section. A retail licensee shall be awarded a Class A  
59 retail license or licenses upon the commissioner's receipt of  
60 his or her payment or down payment: *Provided*, That the  
61 commissioner determines that the retail licensee is in good  
62 standing with the state and meets all other requirements  
63 imposed by the provisions of this article for the issuance of  
64 a Class A retail license.

65           (5) A Class A retail license purchased in accordance with  
66 this subsection shall be issued for the ten-year period  
67 beginning July 1, 2010, or July 1 every ten years thereafter,  
68 and shall expire on June 30, 2020, or on June 30 every ten  
69 years thereafter.

70           (6) Nothing in this subsection may be interpreted as  
71 affecting the ability of a retail licensee to bid for a retail  
72 license or licenses as otherwise provided in this article:  
73 *Provided*, That the retail licensee meets all other  
74 requirements imposed by the provisions of this article for the  
75 submission of bids.

76 (e) All bids for a retail license for the ten-year period  
77 beginning July 1, 2010, or for any ten-year period thereafter  
78 may be rejected by the board if the board determines that the  
79 highest bid fails to meet the minimum bid. The board may  
80 also reject any or all bids for a market zone where, in the  
81 aggregate, the bids for all of the retail licenses in the market  
82 zone fail to meet the minimum aggregate bid for that market  
83 zone. Where the board determines the highest bid meets or  
84 exceeds the minimum bid, the board shall determine whether,  
85 at the time of the bid, the same retail license was held for the  
86 period ending June 30, 2010, or for any ten-year period  
87 thereafter, on June 30 preceding the expiration of the license.  
88 If the current retail licensee holding the same retail license at  
89 the time of submission of the bid for the period ending June  
90 30, 2010, or for any ten-year period thereafter, on June 30  
91 preceding the expiration of the retail license, submitted a bid  
92 that was not less than the minimum bid and is, after  
93 considering any preference applicable under the provisions  
94 of section ten-a of this article, an unsuccessful bidder for the  
95 retail license for the period beginning July 1, 2010, or for any  
96 ten-year period thereafter, on July 1 when the retail license  
97 expires, the commissioner shall notify the person that upon  
98 paying the amount of the highest bid, subject to the  
99 provisions of subsection (f) of this section, and upon  
100 compliance with all other requirements imposed by the  
101 provisions of this article for the issuance of the license, the  
102 retail license for the ten-year period beginning July 1, 2010,  
103 or for any ten-year period thereafter, shall be issued to the  
104 current retail licensee. If, within the time determined by the  
105 commissioner, the current retail licensee pays the amount to  
106 the commissioner and complies with all other requirements  
107 imposed by the provisions of this article for the issuance of  
108 the retail license, the retail license for the ten-year period  
109 beginning July 1, 2010, or for any ten-year period thereafter,  
110 shall be issued to the current retail licensee.

111 (f) The board shall, in determining the amount a current  
112 retail licensee who is an unsuccessful bidder shall pay as  
113 described in subsection (e) of this section, afford the  
114 unsuccessful bidder a preference. If the unsuccessful bidder  
115 is a West Virginia resident as defined in section ten-a of this  
116 article, the board shall afford the unsuccessful bidder a five  
117 percent preference in addition to the five percent preference  
118 afforded under section ten-a of this article. If the  
119 unsuccessful bidder is not a West Virginia resident, the board  
120 shall afford the unsuccessful bidder a five percent preference.  
121 The preference shall be computed by subtracting the  
122 preference percentage of the highest bid price from the  
123 highest bid price: *Provided*, That under no circumstances  
124 may the preference bring the price of the bid below the  
125 minimum bid established by the board: *Provided, however*,  
126 That a current retail licensee who is not operating any of the  
127 retail outlets for which he or she is authorized under the  
128 license is not eligible for the preference provided for under  
129 this section.

130 (g) In the event all bids submitted for a retail license fail  
131 to meet the minimum bid amount for the license as  
132 determined by the board, the board may offer the license for  
133 bid again after it determines a new minimum bid amount for  
134 the retail license.

**§60-3A-10d. Financing option for retail licensees purchasing  
Class A retail licenses.**

1 (a) The commissioner shall offer financing to each retail  
2 licensee who elects to pay the purchase option for a Class A  
3 retail license or licenses as provided in section ten-b of this  
4 article: *Provided*, That the retail licensee is approved by the  
5 commissioner for financing and otherwise complies with the  
6 requirements of this section: *Provided, however*, That the  
7 retail licensee agrees to enter a financing agreement with the  
8 commissioner as provided in subsection (d) of this section.

9 (b) The commissioner shall prepare an application form  
10 for retail licensees who desire to elect the financing option  
11 provided in this section. The commissioner shall make the  
12 form available to retail licensees in paper or electronic format  
13 at least sixty days prior to the acceptance of bids for the ten-  
14 year period beginning July 1, 2010, and July 1 every ten  
15 years thereafter. At a minimum, the application form shall  
16 require the following information:

17 (1) Certification that the applicant elects to pay the  
18 purchase option for a Class A retail license or licenses as  
19 provided in section ten-b of this article;

20 (2) Certification that the applicant is the current holder  
21 and operator of an active retail license issued by the board;

22 (3) A description of the retail license or licenses currently  
23 held by the applicant;

24 (4) Any information the commissioner requires to  
25 evaluate the creditworthiness of the applicant, including  
26 without limitation the applicant's authorization to perform a  
27 criminal background and credit check; and

28 (5) Any additional information the commissioner requires  
29 to effectuate the purposes of this section.

30 (c) For an applicant to be considered for financing, the  
31 application required under subsection (b) of this section must  
32 be submitted to the commissioner with a down payment of  
33 fifty percent of the total amount due under the financing  
34 agreement provided in subsection (d) of this section no later  
35 than May 1, 2010, or, for subsequent retail license periods,  
36 May 1 every ten years thereafter. The commissioner shall  
37 make a determination as to the eligibility of an applicant for  
38 financing and the issuance of a Class A retail license within

39 fifteen days of his or her receipt of the application. If the  
40 commissioner determines that an applicant is ineligible for  
41 financing, is not in good standing with the state or does not  
42 otherwise meet the requirements of this article for the  
43 issuance of a Class A retail license, the commissioner shall  
44 notify the applicant that his or her application for financing  
45 is denied and shall refund in full any moneys paid to the  
46 commissioner as a down payment. If the applicant's  
47 application for financing is denied for any reason other than  
48 the fact that the applicant is not in good standing with the  
49 state or is not otherwise eligible for the issuance of a Class A  
50 retail license, the commissioner shall provide the applicant  
51 the option of paying the full amount of a purchase option for  
52 a Class A retail license or licenses as provided in subsection  
53 (d), section ten-b of this article. At the request of the  
54 applicant, the commissioner may credit any moneys received  
55 as a down payment towards payment of the full amount of a  
56 purchase option for a Class A retail license or licenses.

57 (d) The commissioner is hereby authorized to enter into  
58 a financing agreement with each retail licensee meeting the  
59 requirements of this section. The financing agreement shall  
60 contain such terms and conditions as prescribed by the  
61 commissioner, but at a minimum shall contain the following:

62 (1) The total amount due, including the required down  
63 payment, which shall equal ten percent over and above the  
64 minimum bid as determined by the board for each Class A  
65 retail license the retail licensee wishes to purchase;

66 (2) The interest to be charged on the total amount due at  
67 a rate of the adjusted prime lending rate minus one hundred  
68 basis points. The interest rate shall be set on the date the  
69 financing is approved by the commissioner;

70 (3) The total amount due, not including the required  
71 down payment, to be payable to the commissioner in monthly

72 or quarterly installments over a period of sixty months. If a  
73 retail licensee elects to pay in monthly installments, his or her  
74 first payment is due on August 1 and successive payments are  
75 due on the first day of each month thereafter until the debt is  
76 retired. If a retail licensee elects to pay in quarterly  
77 installments, his or her first payment is due on October 1 and  
78 successive payments are due on the first day of every third  
79 month thereafter until the debt is retired;

80 (4) The failure of a retail licensee to make a payment in  
81 accordance with the terms of the financing agreement shall  
82 result in the entire balance of the amount due becoming  
83 immediately due and payable to the commissioner and shall  
84 result in the forfeiture of the down payment and any moneys  
85 paid to the commissioner in accordance with this section; and

86 (5) The failure of a retail licensee to make a payment in  
87 accordance with the terms of the financing agreement within  
88 thirty days of the day on which the payment was due shall  
89 result in the immediate revocation of the Class A retail  
90 license held by the licensee and the commissioner shall  
91 reissue the license by sealed competitive bid in accordance  
92 with section ten of this article. A retail licensee whose retail  
93 license is revoked for failure to make payments as provided  
94 in the financing agreement is deemed an unsuitable retail  
95 licensee and shall be permanently prohibited from bidding on  
96 a retail license under this article.

#### **§60-3A-11. Bonding requirements.**

1 Each applicant submitting a bid under section ten of this  
2 article or electing to pay a purchase option for a Class A  
3 license or licenses as provided in section ten-b of this article  
4 shall furnish to the commissioner a bond at the time of  
5 bidding, which bond shall guarantee the payment of twenty-  
6 five percent of the price bid or paid for the retail license. The

7 bond required by this section shall be furnished in cash or  
8 negotiable securities or shall be a surety bond issued by a  
9 surety company authorized to do business with the state or an  
10 irrevocable letter of credit issued by a financial institution  
11 acceptable to the commissioner. If furnished in cash or  
12 negotiable securities, the principal shall be deposited without  
13 restriction in the State Treasurer's office and credited to the  
14 commissioner, but any income shall inure to the benefit of  
15 the applicant. For applicants bidding on a retail license, the  
16 bond shall be returned to an applicant following the bidding  
17 if such applicant is not the successful bidder for the retail  
18 license, and, if an applicant is the successful bidder, the bond  
19 shall be released after issuance of the retail license.

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

1 (a) The annual retail license period is from July 1 to June  
2 30 of the following year. The annual retail license fee for a  
3 Class A or Class B retail license is \$2,000. The annual retail  
4 license fee for the initial year of issuance shall be prorated  
5 based on the number of days remaining between the date of  
6 issuance and the following June 30.

7 (b) All retail licenses expire on June 30 of each year and  
8 may be renewed only upon the submission to the  
9 commissioner of the same information required for the  
10 issuance of the license and any additional information  
11 requested by the commissioner on the forms and by the date  
12 prescribed by the commissioner, together with the payment  
13 to the commissioner of the applicable annual retail license fee  
14 required under this section.

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

18       (d) All retail licenses issued or renewed under the  
19 provisions of this article for the period ending June 30, 2010,  
20 or on June 30 for any ten-year period thereafter, expire and  
21 are of no further force or effect as of July 1, 2010, or as of  
22 July 1 every ten years thereafter.

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

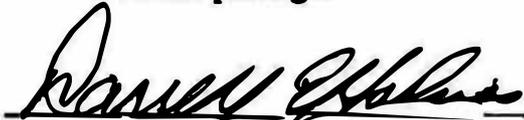
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

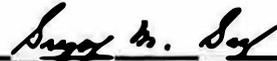
  
\_\_\_\_\_  
Chairman Senate Committee

  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 17<sup>th</sup>  
day of June, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 16 2009

Time 9:10 AM