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## **WEST VIRGINIA CODE**

### **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

#### **ARTICLE 8. SALE OF WINES.**

##### **§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 multicapacity 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. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

"Fortified wine" means 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 \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$3,000. 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 \$3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than \$3,000.

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

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

"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 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 location the annual license fee of \$2,500 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 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 location the annual license fee of \$150 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 location the annual license fee of \$250 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 location the annual license fee of \$150 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 (p) of this section or for a heritage fair and festival license under subsection (q) 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 \$250 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 multicapacity 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 July 1 of each year and end on June 30 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 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 the 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 wine specialty shop.
- (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 \$250 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 \$50 if the event is held on the premises of the winery or farm winery. The application for the license shall contain 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 the festival or fair. A winery or a farm winery licensed under this subsection may exhibit, conduct tastings or sell samples, not to exceed a reasonable serving of

three ounces, and may sell wine samples for consumption on the premises during the operation of a festival or fair: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except that on Sunday tastings, samples and off-premises sales are unlawful between the hours of 2:00 a. m. and 10:00 a. m. 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. The 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 the 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 the license shall be subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule, regulation or order provide for certain waivers or exceptions with respect to the provisions, rules, regulations or orders as the circumstances of each 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 twenty- seven and twenty-eight 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 the license is not subject to the provisions of subsection (g) of this section.

(i) (A) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information as the commissioner may reasonably require and must be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium, provided that the exterior of the area where wine sales may occur are surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(B) A license issued under this subsection and the licensee holding the license is subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each professional baseball stadium 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 sections twenty-seven and twenty-eight of this article: *Provided, however*, That under no circumstances may subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted concerning those subsections.

(C) The commissioner has the authority to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(j) 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 the 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 \$15: *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 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.

(k) With respect to subsections (h), (i), (j), (o) and (p) 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 other legislative rules deemed necessary to carry the provisions of the subsections into effect.

(l) 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 (j) of this section. Each restaurant so licensed shall be charged an additional \$100 per year fee.

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

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

(o) 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.

(p) 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.

(q) 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.

(r)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer or other Division I sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information as the commissioner may reasonably require and must be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I college or university or the name of the primary food and beverage vendor under contract with that college or university. These sales must take place within the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may occur are surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission,



and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each the college stadium 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 sections twenty-seven and twenty-eight of this article: *Provided, however*, That subsection (c) or (d), section twenty of this article may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement 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. 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.

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.**

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

(a) Except as to the commissioner and except as provided in subsection (b) of this section, no person may offer for sale or sell wine in this state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article. Every person, whether resident or nonresident in this state, who is engaged in or desires to engage in the sale or shipment of wine to a distributor for resale under this article shall, prior to engaging in such activities, register with the commissioner. If any such person violates the provisions of this article, he shall not be permitted to sell, ship or deliver any wine to a distributor or to the commissioner, or otherwise engage in the wine business 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 and the Tax 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 jail for a period not to exceed seventy-two hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives such a direct shipment constitutes an act that is an unfair trade practice.

#### **§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.

#### **§60-8-8.**

Repealed. Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-9.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-10.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-11.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-12.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-13.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-14.**

Repealed.

Acts, 1983 Reg. Sess., Ch. 9.

**§60-8-15.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

**§60-8-16. Application for license.**

(a) 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, partnership, limited partnership, limited liability company or corporation, 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) If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in section one thousand thirteen, article ten, chapter forty-four-d of this code. This certification of trust shall include the excerpts described in subsection (e), section one thousand thirteen, article ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are twenty-one years of age or older. If a beneficiary is not twenty-one years of age, the certification of trust must state that the beneficiary's interest in the trust is represented by a trustee, parent or legal guardian who is twenty-one years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is twenty-one years of age. Any beneficiary who is not twenty-one years of age or older shall have his or her trustee, parent or legal guardian include in the certification of trust and state under oath his or her name, address, social security number and birth date.

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

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

The application must be verified by the owner, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license. The application of a corporation applying for a retailer's license need be verified only by its president or vice president.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in article one, chapter twenty-nine-b of this code.

**§60-8-17. License issuance or refusal; terms of license.**

(a) Upon receipt of the application, fee, and bond if required, the commissioner shall conduct such investigation as he may deem necessary to determine the accuracy of the matters contained in the application. For the purposes of conducting such investigation, the commissioner may withhold the granting or refusal to grant a license for a period not to exceed thirty days. If it appears that there is no false statement contained in the application and that the issuance of the license would not be in conflict with any of the provisions of this chapter, the commissioner shall issue the license, and otherwise shall refuse to issue such license.

(b) The commissioner shall refuse the license of any applicant if he finds that such applicant is not a suitable person or that the place of business of such applicant is not a suitable place or that such applicant has not complied with the provisions of this chapter. Upon refusal to issue such license, the commissioner shall enter an order refusing such application, which refusal is final unless a hearing is requested in accordance with the provisions of section eighteen of this article. When such refusal becomes final the commissioner shall forthwith refund to the applicant his fees and bond accompanying said application.

(c) Such license shall expire on the thirtieth day of June next following the date it was issued and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fee and filing of any bond required by this article.

(d) Such license shall not be transferred to another person, but the location of the premises to which the license relates may be changed with the written consent of the commissioner if the new location is such as would satisfy the requirements of this article upon an initial application.

**§60-8-18. Revocation, suspension and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.**

(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 \$1,000 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 of this article 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) An 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 the 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) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right of judicial review of the order code in the circuit court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, such review shall be conducted in the manner provided in chapter twenty-nine-a of this code. The petition for the review must be filed with the circuit court within thirty days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to the matter to circuit court.

(h) The judgment of the 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;

(g) 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.

#### **§60-8-20a. Unlawful acts by persons.**

(a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves wine or other alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being

employed by 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: *Provided*, That such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing wine or other alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase wine or other alcoholic liquors, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one to whom they are not related by blood or marriage, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

#### **§60-8-21. Sale in sealed, labeled packages required.**

All wines sold pursuant to this article, except that sold pursuant to the provisions by article seven of this chapter, shall be sold only in sealed packages, bearing such seals and labels as the commissioner may require. A manufacturer of wine offered for sale by any licensee shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commissioner may require.

#### **§60-8-22. Sales on credit prohibited; exception.**

It shall be unlawful for a distributor to sell or offer to sell, or a retailer to purchase or receive, any wine except on a cash basis and no right of action exists to collect any claims for credit extended contrary to the provisions of this subdivision: *Provided*, That nothing herein prohibits, as a credit on any subsequent sale, the crediting of the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipments or orders and other such reasons customary in the trade: *Provided, however*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the wine. The cost of the electronic fund transfer must be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery.

#### **§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 the 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.

**§60-8-27. Local option elections.**

The question "Shall the sale of alcoholic beverages under the West Virginia liquor control commission be permitted in ....."?

stated in the petition and ballot under the provisions of sections three and five, article five of this chapter shall be deemed to include therein the sale of wine under the provisions of this article. Within thirty days after a "local option election" conducted under the provisions of article five of this chapter in which a majority has voted "No," the commission shall close all state stores and discontinue all agencies within the county or municipality as provided in section seven, article five of this chapter, and each retailer shall cease the sale of wine.

**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 said section.

**§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 retailers and wine specialty shops as defined by section two of this article.

### **§60-8-33. Certain prohibitions not applicable.**

The prohibitions contained in subdivisions (h) and (j), section thirteen, article sixteen, chapter eleven of this code and the prohibitions contained in subdivisions (1), (2) and (3), section seven,

article six of this chapter shall not apply to the holder of a retailer's license issued under the provisions of this article: *Provided*, That all prohibitions contained within this article shall apply to the holder of a retailer's license notwithstanding the provisions of this section.

**§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., or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant or private wine spa, his or her servants, agents or employees to sell wine between the hours of two o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on weekdays and Saturdays.

**§60-8-35. Other unlawful acts.**

No person while on the premises of any retailer licensed pursuant to this article shall:

- (1) Break the seal on any package or bottle of wine;
- (2) Consume alcoholic liquor, wine or beer; or
- (3) Loiter.