

**DISCLAIMER:** This version of the West Virginia Code is updated with legislation passed through the 2016 Regular Session. While every attempt is made to maintain the West Virginia Code sections, this version may not be the most updated and accurate version of the West Virginia Code. If you rely on this version, you are relying at your own risk, please check with the West Virginia Legislature or its website to obtain updated versions or copies of legislation which passed during the current legislative session or any current special session.

## **WEST VIRGINIA CODE**

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

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

##### **§60-3A-1. Short title.**

This article shall be known and may be cited as the "State Retail Liquor License Act".

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

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

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

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

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

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

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

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

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

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

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

(1) The provisions of this article as enacted during the regular session of the Legislature in 1990 were intended to require that all licenses issued for the retail sale of liquor expire as of July 1, 2000, and that the issuance of retail licenses for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter, be based on sealed competitive bids except as provided in section ten-b of this article;

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

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

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

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

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

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

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

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

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

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

**§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.**

(a) Notwithstanding any provision of this code to the contrary, the sale of liquor by retail licensees in accordance with the provisions of this article is lawful.

(b) Upon the opening of a retail outlet in any market zone, the state shall, as soon as practicable, discontinue operating any and all state liquor stores and agency stores within the market zone so long as a retail outlet is in operation in the market zone.

(c) No provision of this section shall prevent the commissioner, with the consent of the board, from operating a state liquor store in a market zone pursuant to the provisions of article three of this chapter where there are no retail outlets in operation, and the operation of any retail outlet in the market zone is prevented by a matter in controversy pending judicial adjudication or the licensee is unable or unwilling to open a retail outlet: *Provided*, That, the board determines that the resolution of the controversy will continue for such duration that the opening of a state liquor store is necessary to meet reasonable consumer concerns of availability of liquor.

**§60-3A-3a. Liquor sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, with the written approval of the commissioner, conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner requesting to hold a liquor sampling event, including:

(1) The day of the event;

(2) The location of the event;

(3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) One separate and individual sample serving per customer verified to be twenty-one years of age or older; and

(2) One ounce in total volume.

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee;

(2) Be at least twenty-one years of age or older; and

(3) Have specific knowledge of the West Virginia product being sampled to convey to the customer.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of twenty-one years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections twenty-four, twenty-five- a, twenty-six and twenty-seven of this article;

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code or propose rules for legislative approval in accordance with the provisions of article three, chapter twenty- nine-a of this code.

#### **§60-3A-4. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

(m) "Liquor sampling event" means an event approved by the commissioner, for a Class A retail licensee to hold a liquor sampling authorized pursuant to section three-a of this article.

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

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

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

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

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

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

(t) "Sampling day" means any days and hours of the week where retail licensees may sell liquor pursuant to section eighteen, article three-a, chapter sixty of this code for a Class A retail licensee to conduct a liquor sampling event.

(u) "West Virginia product" means all liquor types and classes as approved by the commissioner and maintained on the ABCA retail liquor product list.

**§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.**

(a) There is hereby continued the state retail liquor licensing board which shall be composed of five members, three of whom shall be appointed by the governor by and with the advice and consent of the Senate, one of whom shall be the secretary of tax and revenue, and one of whom shall be the commissioner. The secretary of tax and revenue and the commissioner shall serve as the chairman and secretary, respectively, of the board. No more than two of the three members appointed by the governor shall be of the same political party. No member of the board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.

(b) The provisions of this subsection apply to the three members appointed by the governor. They shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by Section 5, Article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall receive compensation of one hundred dollars per day for each day actually engaged in the performance of their duties as board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Appointments to fill vacancies made after the amendment to this section made in one thousand nine hundred ninety-nine shall be made to provide that after the next two appointments, and thereafter, there is a member from each of the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(d) Staff, office facilities and costs of operation of the board shall be provided by the commissioner.

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

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

(b) The commissioner shall:

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

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

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

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

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

(6) Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class A retail license which shall include, without limitation, the requirement that a minimum square footage of displayed inventory available for retail purchase at the retail outlet be composed of liquor, beer and nonintoxicating beer products and that liquor, beer and nonintoxicating beer products available for sale are placed for sale throughout the entire retail area of the retail outlet including the retail floor space and shelving;

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

(8) Enforce the provisions of this article;

(9) Impose civil penalties upon retail licensees;

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

(11) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight 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 such section was set forth in extenso herein.

(c) The board and the commissioner shall each:

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

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

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

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

(a) The market zones established by the board for the retail sale of liquor within this state under the enactment of this section in 1990 may not be modified by the board unless authorized by the Legislature. For each market zone established by the board, the commissioner may issue one or more Class A retail licenses and one or more Class B retail licenses within the market zone: *Provided*, That the number of Class B retail licenses to be issued by the commissioner within a market zone shall not exceed one hundred fifty percent of the number of Class A retail outlets authorized for that market zone, except as otherwise authorized by subsection (d) of this section or section twenty-seven-a of this article: *Provided, however*, That, except as authorized by subsection (d) of this section or section twenty-seven-a of this article, in a market zone where the number of Class A retail licenses issued by the commissioner is an odd number, the number of Class B retail licenses which may be issued in that market zone shall be rounded up to the next highest whole number following that number which is equal to one hundred fifty percent of the number of Class A retail licenses issued by the commissioner: *Provided*, That for the ten-year period beginning July 1, 2010, the number of Class B retail licenses which are available for bid in a market zone shall not be less than the number of mixed retail outlets located in that market zone as of October 31, 2009.

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



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

(d) Notwithstanding any provision of subsection (a) or (b) of this section, no later than thirty days prior to the receipt of the bids described in section ten-b of this article, the board may authorize the commissioner to issue additional Class B retail licenses in a market zone for the ten-year period which begins next following July 1, where the board determines that:

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

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

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

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

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

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

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

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

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

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

(4) That the applicant is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer;

that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

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

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

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

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

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

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

**§60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing.**

(a) Upon receipt of an application for a retail license and such supplemental information as the commissioner may require, the commissioner may conduct such investigation of an applicant as deemed necessary or desirable.

(b) Upon the completion of any investigation of an applicant, the commissioner shall inform such applicant in writing whether the application has been approved or denied, and shall post a copy of the decision in the commissioner's office.

(c) When an application is denied, the commissioner shall provide the applicant the reasons for the denial, including specific findings of fact, and the applicant shall be entitled to a hearing before the commissioner if a hearing is requested within five days of the decision. Any such hearing shall be held as specified in section twenty-eight of this article, but the decision after hearing shall, notwithstanding the provisions of section twenty-eight, be final and binding and not subject to judicial review.

(d) An applicant shall provide all information required by this article and satisfy all requests for information pertaining to qualification and in the form specified by the commissioner. By filing an application, an applicant shall waive liability for any damages resulting from any disclosure or

publication in any manner of any material or information acquired during inquiries, investigations or hearings.

**§60-3A-10. Bidding procedure.**

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

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

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

(d) Each person desiring to submit a bid shall file the bid with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder's application shall be maintained as a public record, shall be open to public inspection in the commissioner's office and shall not be destroyed without the written consent of the Legislative Auditor.

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

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

**§60-3A-10a. Preference for resident bidders.**

In determining the highest bidder for purposes of section ten of this article, the board shall afford a five percent preference for West Virginia resident bidders, which shall be computed by adding five percent of the bid price to the bid price submitted by each resident bidder. For purposes of this

section a bidder shall be considered to be a West Virginia resident if the bidder: (1) Has resided in this state for at least four years immediately prior to the date on which the bid is opened; or, if the bidder is an applicant other than an individual, has had its headquarters or principal place of business in this state for at least four years immediately prior to that date; and (2) meets the requirements set forth in section forty-four, article three, chapter five-a of this code relating to a residency of vendors, except for the requirement of having paid business and occupation taxes.

**§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.**

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

(b) Prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, the board shall determine the minimum bid for each license based upon a review of inflation data, demographic data, the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the Governor's official revenue estimates for fiscal year 2009-2010 as presented to the regular session of the Legislature in 2009.

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

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

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

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

(4) Each eligible retail licensee who elects to pay a purchase option shall, within thirty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, pay to the commissioner an amount equal to ten percent over and above the minimum

bid as determined by the board for each Class A retail license the retail licensee wishes to purchase or, if the retail licensee elects to take the financing option provided in section ten-d of this article, a down payment, the amount of which shall be calculated in accordance with the provisions of that section. A retail licensee shall be awarded a Class A retail license or licenses upon the commissioner's receipt of his or her payment or down payment: *Provided*, That the commissioner determines that the retail licensee is in good standing with the state and meets all other requirements imposed by the provisions of this article for the issuance of a Class A retail license.

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

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

(e) All bids for a retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the license. If the current retail licensee holding the same retail license at the time of submission of the bid for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the retail license, submitted a bid that was not less than the minimum bid and is, after considering any preference applicable under the provisions of section ten-a of this article, an unsuccessful bidder for the retail license for the period beginning July 1, 2010, or for any ten-year period thereafter, on July 1 when the retail license expires, the commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of subsection (f) of this section, and upon compliance with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee. If, within the time determined by the commissioner, the current retail licensee pays the amount to the commissioner and complies with all other requirements imposed by the provisions of this article for the issuance of the retail license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee.

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

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

**§60-3A-10c. Criminal penalties for unlawful inducement.**

(a) Any person who gives another person any thing of value to induce the other to refrain from bidding for a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars, and, in addition, shall be subject to a civil penalty payable to the commissioner of not more than one million dollars.

(b) Any person who gives a person any thing of value to induce the other to refrain from operating an outlet authorized under a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars, and, in addition, shall be subject to a civil penalty payable to the commissioner of not more than one million dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The total amount due, not including the required down payment, to be payable to the commissioner in monthly or quarterly installments over a period of sixty months. If a retail licensee elects to pay in monthly installments, his or her first payment is due on August 1 and successive payments are due on the first day of each month thereafter until the debt is retired. If a retail licensee elects to pay in quarterly installments, his or her first payment is due on October 1 and successive payments are due on the first day of every third month thereafter until the debt is retired;

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

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

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

Each applicant submitting a bid under section ten of this article or electing to pay a purchase option

for a Class A license or licenses as provided in section ten-b of this article shall furnish to the commissioner a bond at the time of bidding, which bond shall guarantee the payment of twenty-five percent of the price bid or paid for the retail license. The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commissioner. If furnished in cash or negotiable securities, the principal shall be deposited without restriction in the State Treasurer's office and credited to the commissioner, but any income shall inure to the benefit of the applicant. For applicants bidding on a retail license, the bond shall be returned to an applicant following the bidding if such applicant is not the successful bidder for the retail license, and, if an applicant is the successful bidder, the bond shall be released after issuance of the retail license.

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

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

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

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

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

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

**§60-3A-13. Annual reports.**

On or before the thirty-first day of December, one thousand nine hundred ninety, and each successive year thereafter, the commissioner shall submit to the joint committee on government and finance an annual report focused upon subjects of interest concerning retail alcohol sales and of the implementation of this article, including, but not limited to, the total revenue earned by the issuance of retail licenses, the location of each retail outlet and the names of all applicants for retail franchises.

**§60-3A-14. Sale, assignment or transfer of retail license.**

(a) No person may purchase or otherwise acquire a retail license unless the commissioner has first



approved of such person's qualifications to hold a retail license, which qualifications shall be the same as those required under section eight of this article.

(b) No person may sell, assign or otherwise transfer a retail license without the prior written approval of the commissioner. For purposes of this section, the merger of a retail licensee or the sale of more than fifty percent of the outstanding stock of or partnership interests in the retail licensee shall be deemed to be a sale, assignment or transfer of a retail license under this section.

#### **§60-3A-15. Surrender of retail license.**

Any retail licensee may surrender a retail license to the commissioner at any time. The commissioner shall then proceed to reissue the retail license by following the bidding and other procedures set forth herein for the initial issuance of a retail license.

#### **§60-3A-16. Restriction on location of retail outlets.**

No retail outlet may be located within the immediate vicinity of a school or church: *Provided*, That the provisions of this section shall not apply to the location of a retail licensee who, on the date of the passage of this act, holds a license for the retail sale of wine, fortified wine or nonintoxicating beer at such location.

#### **§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.**

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to section three, article four of this chapter.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in section seventeen, article three of this chapter.

(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of sections twelve and thirteen, article six of this chapter shall not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under article eight of this chapter. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check or cashier's check which shall be received by the commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e)(1) A retail licensee may not sell liquor to persons licensed under the provisions of article seven of this chapter at less than one hundred ten percent of the retail licensee's cost as defined in section six, article eleven-a, chapter forty-seven of this code.

(2) A retail licensee may not sell liquor to the general public at less than one hundred ten percent of the retail licensee's cost as defined in section six, article eleven-a, chapter forty-seven of this code.

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

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

**§60-3A-19. Limitation on amount to be sold.**

Not more than ten gallons of liquor may be sold by a retail licensee to a person at one time without the approval of the commissioner or his or her representative, but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes: *Provided*, That this section does not apply to purchases by private clubs as defined in article seven of this chapter.

**§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.**

This article does not apply to retail sales of nonintoxicating beer and a retail licensee may sell nonintoxicating beer for consumption off the premises of any retail outlet operated by such retail licensee if such retail licensee has obtained the appropriate license to sell the same under article sixteen, chapter eleven of this code.

**§60-3A-21. Tax on purchases of liquor.**

(a) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied tax upon all purchases of liquor from retail licensees. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the retail licensee.

(b) All such tax collected within the corporate limits of a municipality in this state shall be remitted to such municipality; all such tax collected outside of but within one mile of the corporate limits of any municipality shall be remitted to such municipality; and all other tax so collected shall be remitted to the county wherein collected: *Provided*, That where the corporate limits of more than one municipality be within one mile of the place of collection of such tax, all such tax collected

shall be divided equally among each of such municipalities: *Provided, however,* That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

(c) The tax commissioner, by appropriate rule promulgated pursuant to chapter twenty-nine-a of this code, shall provide for the collection of such tax upon all purchases from retail licensees, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rule shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the state treasurer upon warrants of the auditor payable to the counties and municipalities.

#### **§60-3A-22. Requirement for posting informational sign.**

Each retail licensee shall post in an open and prominent place within each retail outlet operated by such person a blood-alcohol chart in the form prescribed by section twenty-four, article six of this chapter.

#### **§60-3A-23. Records required of retail licensees; inspection of records.**

The commissioner shall by rule prescribe the records to be kept by retail licensees relating to the purchase and sale of liquor. Such records shall be open at all reasonable times to inspection by the commissioner.

#### **§60-3A-24. Unlawful acts by persons.**

(a) (1) Any person who is under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$500 or shall be confined in jail, or, in the case of a juvenile, a detention center, 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.

(2) 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 a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing 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 Control 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 liquor from a retail 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 liquor from a retail licensee is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$100 or confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in

lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year. Any person convicted under this section may be sentenced pursuant to the provisions of section one-a, article eleven-a, chapter sixty-two of this code.

(c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$250 dollars or confined in jail for a period not to exceed ten days, or both fined and confined.

(d) No person while on the premises of a retail outlet may consume liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or confined in jail for a period not to exceed ten days, or both fined and confined.

**§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.**

(a) It is unlawful for any retail licensee, or agent or employee thereof, on such retail licensee's premises to:

- (1) Sell or offer for sale any liquor other than from the original package or container;
- (2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under twenty-one years of age;
- (3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;
- (4) Sell or offer for sale any liquor on any Sunday or other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;
- (5) Permit the consumption by any person of any liquor;
- (6) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any liquor;
- (7) Permit any person under eighteen years of age to sell, furnish or give liquor to any other person;
- (8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or
- (9) Permit any person to break the seal on any package or bottle of liquor.

(b) Any person who violates any provision of this article, except section twenty-four of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred or more

than five thousand dollars, or imprisoned in the county jail for not less than thirty days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least eighteen years of age to serve in any retail licensee's lawful employment at any retail outlet operated by such retail licensee, or from having such person sell or deliver liquor under the provisions of this article. With the prior approval of the commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than eighteen years of age but at least sixteen years of age, but such persons' duties shall not include the sale or delivery of liquor: *Provided*, That the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the retail license issued to any such retail licensee.

#### **§60-3A-25a. Mandatory verification of age of persons purchasing alcohol.**

(a) A licensee who:

(1) Has installed a transaction scan device in its licensed premises; and

(2) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom liquor is sold, furnished, or given away by the use of the transaction device may not be subject to: (A) Any criminal penalties whatsoever; (B) any administrative penalties from the commissioner; or (C) any civil liability whatsoever for the improper sale, furnishing or giving away of liquor to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away liquor to an individual who is less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee, who has improperly sold, furnished or given away liquor to an individual less than twenty-one years of age, is subject to termination from employment, and the employer shall have no civil liability for the termination.

(b) For purposes of this subsection, a licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom liquor is sold by providing evidence:

(1) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom liquor will be sold, furnished or given away;

(2) That it has communicated this policy to each employee, servant or agent; and

(3) That it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of liquor and that it has taken corrective action for any discovered noncompliance with this policy.

(c) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

### **§60-3A-26. Civil penalties.**

(a) Any retail licensee who violates any provision of this article or any rule promulgated by the board or commissioner, may be assessed a civil penalty by the commissioner which penalty shall not be more than one thousand dollars for each such violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the retail licensee's history of previous violations, the appropriateness of such penalty to the size of the business of the retail licensee charged, the gravity of the violation and the demonstrated good faith of the retail licensee charged in attempting to achieve rapid compliance after notification of a violation.

(b) A civil penalty shall be assessed by the commissioner only after the commissioner shall have given at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for the proposed civil penalty and the amount thereof, and shall designate a time and place for a hearing where the retail licensee may show cause why the civil penalty should not be imposed. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(c) The provisions of subsections (b), (c), (d) and (e) of section twenty-eight of this article are applicable to any such hearing and with respect to judicial review thereafter.

### **§60-3A-27. Suspension or revocation of retail license.**

(a) The commissioner may, upon his or her own motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of this article or of any rule promulgated by the board or commissioner under authority of this article has been violated by any retail licensee. The commissioner may suspend or revoke a retail license if the retail licensee or any employee thereof acting in the scope of his or her employment has violated any such provision, and may suspend a retail license without hearing for a period not to exceed twenty days if he or she finds probable cause to believe that the retail licensee or any employee thereof acting in the scope of his or her employment has willfully violated any such provision.

(b) The commissioner may revoke a retail license for any reason which would constitute grounds for the denial of an application filed pursuant to section eight of this article.

### **§60-3A-27a. Revocation of license or reduction of authority to operate retail outlet for failure to operate retail outlet.**

(a)(1) The commissioner may revoke a Class A retail license if the licensee fails to operate at least one of the retail outlets authorized under the license. The commissioner may revoke a Class B retail license if the licensee fails to operate the retail outlet authorized under the license.

(2) The commissioner may not accept the bid of a person who has had a license revoked pursuant to subdivision (1) of this subsection when the license is offered for bid following the revocation.

(b)(1) Where a person operates at least one of the retail outlets authorized under a Class A license, but fails to operate the full number of retail outlets authorized under the license, the commissioner may reduce the number of retail outlets the person is authorized to operate under the license by the number that is not being operated.

(2) Notwithstanding any provision of section seven of this article to the contrary, the board may authorize the commissioner to issue, subject to the bid requirements of section ten of this article, a Class B license in the stead of each retail outlet for which authority to operate under a Class A license has been reduced under subdivision (1) of this subsection.

(3) The commissioner may not accept the bid of a person who has had the number of retail outlets authorized under a license reduced pursuant to subdivision (1) of this subsection for any Class B license issued in the stead of a retail outlet previously authorized under the reduced license.

(c) The board shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code prescribing the criteria under which the commissioner is to determine whether a retail licensee has failed to operate an outlet.

(d) A revocation or reduction under this section is subject to the provisions for notice, hearing and review prescribed in section twenty-eight of this article.

**§60-3A-28. Notice of and hearing on revocation; right of appeal; appeal procedures.**

(a) Before a retail license issued under the authority of this article is suspended for a period of more than twenty days, or revoked, the commissioner shall give at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for suspension or revocation, and shall designate a time and place for a hearing where the retail licensee may show cause why the retail license should not be suspended or revoked. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(b) The hearing and the administrative procedures prior to, during and following the hearing are governed by and shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code in like manner as if the provisions of article five were fully set forth in this section.

(c) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, any person adversely affected by a final order entered following the hearing has the right of judicial review by 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 the review is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to the matter to circuit court.

(d) 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.

(e) Legal counsel and services for the commissioner in all the 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.

(f) Upon final revocation, the commissioner shall proceed to reissue the retail license by following the procedures set forth herein for the initial issuance of a retail license.

**§60-3A-29. Disposition of inventory upon revocation or surrender of retail license.**

In the event of the revocation, expiration or surrender of any retail license in accordance with the provisions of this article, the commissioner may, in his or her discretion, purchase, or authorize another person to purchase, all or any portion of the liquor inventory of the retail licensee. If the commissioner elects to purchase, or authorizes another person to purchase, the inventory or any portion of the inventory, the retail licensee shall sell the inventory as directed by, and upon terms determined by, the commissioner.

**§60-3A-30.**

Repealed.

Acts, 1999 Reg. Sess., Ch. 5.

**§60-3A-31. Rules of construction; severability.**

(a) Nothing contained in this article shall be construed to modify the provisions of article five of this chapter relating to local option elections, except that the references to sales of liquor by the commissioner shall be deemed to refer to sales of liquor by retail licensees.

(b) If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

(c) The provisions of subsection (b) of this section shall be fully applicable to all future amendments or additions to this article, with like effect as if the provisions of said subsection (b) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

(d) In the event of any conflict between any provision of this article and any other provision of this code, any such other provision shall be construed and applied so as to enable the board and commissioner to implement and make effective the provisions of this article.