

Adopted by House 4-12-2013

SB470 H JUD AM 4-10 #1

The Committee on the Judiciary moves to amend the bill on page one, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following language: "That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-4-3 of said code be amended and reenacted; that §60-6-2 of said code be amended and reenacted; that §60-7-11 of said code be amended and reenacted; and that §60-8-3 and §60-8-34 of said code be amended and reenacted, all to read as follows:

1 **CHAPTER 11. TAXATION.**

2 **ARTICLE 16. NONINTOXICATING BEER.**

3 **§11-16-18. Unlawful acts of licensees; criminal penalties.**

4 (a) It shall be unlawful:

5 (1) For any licensee, his, her, its or their servants, agents
6 or employees to sell, give or dispense, or any individual to drink
7 or consume, in or on any licensed premises or in any rooms directly
8 connected therewith, nonintoxicating beer or cooler on weekdays
9 between the hours of two o'clock a.m. and seven o'clock a.m., or
10 between the hours of two o'clock a.m. and ~~one o'clock p.m.~~ ten
11 o'clock a.m. on any Sunday, except in private clubs licensed under
12 the provisions of article seven, chapter sixty of this code, where
13 the hours shall conform with the hours of sale of alcoholic
14 liquors;

1 (2) For any licensee, his, her, its or their servants, agents
2 or employees to sell, furnish or give any nonintoxicating beer as
3 defined in this article to any person visibly or noticeably
4 intoxicated or to any person known to be insane or known to be a
5 habitual drunkard;

6 (3) For any licensee, his, her, its or their servants, agents
7 or employees to sell, furnish or give any nonintoxicating beer as
8 defined in this article to any person who is less than twenty-one
9 years of age;

10 (4) For any distributor to sell or offer to sell, or any
11 retailer to purchase or receive, any nonintoxicating beer as
12 defined in this article, except for cash and no right of action
13 shall exist to collect any claims for credit extended contrary to
14 the provisions of this subdivision. Nothing herein contained shall
15 prohibit a licensee from crediting to a purchaser the actual price
16 charged for packages or containers returned by the original
17 purchaser as a credit on any sale, or from refunding to any
18 purchaser the amount paid or deposited for the containers when
19 title is retained by the vendor: *Provided*, That a distributor may
20 accept an electronic transfer of funds if the transfer of funds is
21 initiated by an irrevocable payment order on the invoiced amount
22 for the nonintoxicating beer. The cost of the electronic fund
23 transfer shall be borne by the retailer and the distributor must
24 initiate the transfer no later than noon of one business day after
25 the delivery;

26 (5) For any brewer or distributor or brewpub or his, her, its

1 or their agents to transport or deliver nonintoxicating beer as
2 defined in this article to any retail licensee on Sunday;

3 (6) For any brewer or distributor to give, furnish, rent or
4 sell any equipment, fixtures, signs or supplies directly or
5 indirectly or through a subsidiary or affiliate to any licensee
6 engaged in selling products of the brewing industry at retail or to
7 offer any prize, premium, gift or other similar inducement, except
8 advertising matter of nominal value, to either trade or consumer
9 buyers: *Provided*, That a distributor may offer, for sale or rent,
10 tanks of carbonic gas. Nothing herein contained shall prohibit a
11 brewer from sponsoring any professional or amateur athletic event
12 or from providing prizes or awards for participants and winners in
13 any events: *Provided, however*, That no event shall be sponsored
14 which permits actual participation by athletes or other persons who
15 are minors, unless specifically authorized by the commissioner;

16 (7) For any licensee to permit in his or her premises any
17 lewd, immoral or improper entertainment, conduct or practice;

18 (8) For any licensee except the holder of a license to operate
19 a private club issued under the provisions of article seven,
20 chapter sixty of this code or a holder of a license or a private
21 wine restaurant issued under the provisions of article eight of
22 said chapter to possess a federal license, tax receipt or other
23 permit entitling, authorizing or allowing the licensee to sell
24 liquor or alcoholic drinks other than nonintoxicating beer;

25 (9) For any licensee to obstruct the view of the interior of
26 his or her premises by enclosure, lattice, drapes or any means

1 which would prevent plain view of the patrons occupying the
2 premises. The interior of all licensed premises shall be
3 adequately lighted at all times: *Provided*, That provisions of this
4 subdivision do not apply to the premises of a Class B retailer, the
5 premises of a private club licensed under the provisions of article
6 seven, chapter sixty of this code or the premises of a private wine
7 restaurant licensed under the provisions of article eight of said
8 chapter;

9 (10) For any licensee to manufacture, import, sell, trade,
10 barter, possess or acquiesce in the sale, possession or consumption
11 of any alcoholic liquors on the premises covered by a license or on
12 premises directly or indirectly used in connection therewith:
13 *Provided*, That the prohibition contained in this subdivision with
14 respect to the selling or possessing or to the acquiescence in the
15 sale, possession or consumption of alcoholic liquors is not
16 applicable with respect to the holder of a license to operate a
17 private club issued under the provisions of article seven, chapter
18 sixty of this code nor shall the prohibition be applicable to a
19 private wine restaurant licensed under the provisions of article
20 eight of said chapter insofar as the private wine restaurant is
21 authorized to serve wine;

22 (11) For any retail licensee to sell or dispense
23 nonintoxicating beer, as defined in this article, purchased or
24 acquired from any source other than a distributor, brewer or
25 manufacturer licensed under the laws of this state;

26 (12) For any licensee to permit loud, boisterous or disorderly

1 conduct of any kind upon his or her premises or to permit the use
2 of loud musical instruments if either or any of the same may
3 disturb the peace and quietude of the community wherein the
4 business is located: *Provided*, That no licensee may have in
5 connection with his or her place of business any loudspeaker
6 located on the outside of the licensed premises that broadcasts or
7 carries music of any kind;

8 (13) For any person whose license has been revoked, as
9 provided in this article, to obtain employment with any retailer
10 within the period of one year from the date of the revocation, or
11 for any retailer to knowingly employ that person within the
12 specified time;

13 (14) For any distributor to sell, possess for sale, transport
14 or distribute nonintoxicating beer except in the original
15 container;

16 (15) For any licensee to knowingly permit any act to be done
17 upon the licensed premises, the commission of which constitutes a
18 crime under the laws of this state;

19 (16) For any Class B retailer to permit the consumption of
20 nonintoxicating beer upon his or her licensed premises;

21 (17) For any Class A licensee, his, her, its or their
22 servants, agents or employees, or for any licensee by or through
23 any servants, agents or employees, to allow, suffer or permit any
24 person less than eighteen years of age to loiter in or upon any
25 licensed premises; except, however, that the provisions of this
26 subdivision do not apply where a person under the age of eighteen

1 years is in or upon the premises in the immediate company of his or
2 her parent or parents, or where and while a person under the age of
3 eighteen years is in or upon the premises for the purpose of and
4 actually making a lawful purchase of any items or commodities
5 therein sold, or for the purchase of and actually receiving any
6 lawful service therein rendered, including the consumption of any
7 item of food, drink or soft drink therein lawfully prepared and
8 served or sold for consumption on the premises;

9 (18) For any distributor to sell, offer for sale, distribute
10 or deliver any nonintoxicating beer outside the territory assigned
11 to any distributor by the brewer or manufacturer of nonintoxicating
12 beer or to sell, offer for sale, distribute or deliver
13 nonintoxicating beer to any retailer whose principal place of
14 business or licensed premises is within the assigned territory of
15 another distributor of such nonintoxicating beer: *Provided*, That
16 nothing herein is considered to prohibit sales of convenience
17 between distributors licensed in this state wherein one distributor
18 sells, transfers or delivers to another distributor a particular
19 brand or brands for sale at wholesale; and

20 (19) For any licensee or any agent, servant or employee of any
21 licensee to knowingly violate any rule lawfully promulgated by the
22 commissioner in accordance with the provisions of chapter
23 twenty-nine-a of this code.

24 (b) Any person who violates any provision of this article
25 including, but not limited to, any provision of this section, or
26 any rule, or order lawfully promulgated by the commissioner, or who

1 makes any false statement concerning any material fact in
2 submitting application for license or for a renewal of a license or
3 in any hearing concerning the revocation thereof, or who commits
4 any of the acts herein declared to be unlawful is guilty of a
5 misdemeanor and, upon conviction thereof, shall be punished for
6 each offense by a fine of not less than twenty-five nor more than
7 five hundred dollars, or confined in the county or regional jail
8 for not less than thirty days nor more than six months, or by both
9 fine and confinement. Magistrates shall have concurrent
10 jurisdiction with the circuit court and any other courts having
11 criminal jurisdiction in their county for the trial of all
12 misdemeanors arising under this article.

13 (c) (1) A Class B licensee that:

14 (A) Has installed a transaction scan device on its licensed
15 premises; and

16 (B) Can demonstrate that it requires each employee, servant or
17 agent to verify the age of any individual to whom nonintoxicating
18 beer is sold, furnished or given away by the use of the transaction
19 device may not be subject to: (i) Any criminal penalties
20 whatsoever, including those set forth in subsection (b) of this
21 section; (ii) any administrative penalties from the commissioner;
22 or (iii) any civil liability whatsoever for the improper sale,
23 furnishing or giving away of nonintoxicating beer to an individual
24 who is less than twenty-one years of age by one of his or her
25 employees, servants or agents. Any agent, servant or employee who
26 has improperly sold, furnished or given away nonintoxicating beer

1 to an individual less than twenty-one years of age is subject to
2 the criminal penalties of subsection (b) of this section. Any
3 agent, servant or employee who has improperly sold, furnished or
4 given away nonintoxicating beer to an individual less than
5 twenty-one years of age is subject to termination from employment,
6 and the employer shall have no civil liability for the termination.

7 (2) For purposes of this section, a Class B licensee can
8 demonstrate that it requires each employee, servant or agent to
9 verify the age of any individual to whom nonintoxicating beer is
10 sold by providing evidence: (A) That it has developed a written
11 policy which requires each employee, servant or agent to verify the
12 age of each individual to whom nonintoxicating beer will be sold,
13 furnished or given away; (B) that it has communicated this policy
14 to each employee, servant or agent; and (C) that it monitors the
15 actions of its employees, servants or agents regarding the sale,
16 furnishing or giving away of nonintoxicating beer and that it has
17 taken corrective action for any discovered noncompliance with this
18 policy.

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

26 (d) Nothing in this article nor any rule or regulation of the

1 commissioner shall prevent or be considered to prohibit any
2 licensee from employing any person who is at least eighteen years
3 of age to serve in the licensee's lawful employ, including the sale
4 or delivery of nonintoxicating beer as defined in this article.
5 With the prior approval of the commissioner, a licensee whose
6 principal business is the sale of food or consumer goods or the
7 providing of recreational activities, including, but not limited
8 to, nationally franchised fast food outlets, family-oriented
9 restaurants, bowling alleys, drug stores, discount stores, grocery
10 stores and convenience stores, may employ persons who are less than
11 eighteen years of age but at least sixteen years of age: *Provided,*
12 That the person's duties may not include the sale or delivery of
13 nonintoxicating beer or alcoholic liquors: *Provided, however,* That
14 the authorization to employ persons under the age of eighteen years
15 shall be clearly indicated on the licensee's license.

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

17 **ARTICLE 4. LICENSES.**

18 **§60-4-3. To whom licensed manufacturer may sell.**

19 A person who is licensed to manufacture alcoholic liquors in
20 this state may sell liquors in this state only to the West Virginia
21 Alcohol Beverage Control Commissioner and to wholesalers and
22 retailers licensed as provided in this chapter: *Provided,* That a
23 holder of a winery or a farm winery license may sell wines and a
24 holder of a distillery or a mini-distillery license may sell
25 alcoholic liquors manufactured by it in this state in accordance
26 with the provisions of section two, article six of this chapter.

1 Hours of retail sale by a winery or a farm winery or distillery or
2 a mini-distillery are subject to regulation by the commissioner:
3 Provided, That the hours of a private club operating on the
4 premises of a distillery or mini-distillery shall be the same as
5 any private club licensed under article seven, chapter sixty of
6 this code. A winery, distillery, farm winery or mini-distillery
7 may sell and ship alcoholic liquors outside of the state subject to
8 provisions of this chapter.

9 **§60-4-3a. Distillery and mini-distillery license to manufacture**
10 **and sell.**

11 (a) *Sales of liquor.* -- An operator of a distillery or a
12 mini-distillery may offer liquor for retail sale to customers from
13 the distillery or the mini-distillery for consumption off premises
14 only. Except for free complimentary samples offered pursuant to
15 section one, article six of this chapter, or sales for consumption
16 offered under a valid private club license pursuant to article
17 seven, chapter sixty of this code, customers are prohibited from
18 consuming any liquor on the premises of the distillery or the
19 mini-distillery. Distilleries that produce 50,000 or more gallons
20 of alcoholic liquor per year may not hold a private club license.

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

1 distillers.

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

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

14 (e) *Limitations on licensees.* -- No distillery or
15 mini-distillery may sell more than three thousand gallons of
16 product at the distillery or mini-distillery location the initial
17 two years of licensure. The distillery or mini-distillery may
18 increase sales at the distillery or mini-distillery location by two
19 thousand gallons following the initial twenty-four month period of
20 licensure and may increase sales at the distillery or
21 mini-distillery location each subsequent twenty-four month period
22 by two thousand gallons, not to exceed ten thousand gallons a year
23 of total sales at the distillery or mini-distillery location. No
24 licensed mini-distillery may produce more than twenty thousand
25 gallons per calendar year at the mini-distillery location. No more
26 than one distillery or mini-distillery license may be issued to a

1 single person or entity and no person may hold both a distillery
2 and a mini-distillery license.

3 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

4 **§60-6-2. When lawful to manufacture and sell wine and cider.**

5 The provisions of this chapter may not prevent:

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

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

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

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

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

24 (6) The holder of a distillery or a mini-distillery license
25 from selling alcoholic liquor for off-premises consumption sold at
26 retail at the distillery or the mini-distillery, as provided in

1 section four, article three-a of this chapter; and

2 (7) The holder of a distillery or mini-distillery license from
3 selling alcoholic liquor, other than in sealed packages, for
4 consumption at the private club on the distillery or the
5 mini-distillery premises, if the holder of the distillery or
6 mini-distillery license produces less than 50,000 gallons of
7 alcoholic liquor per year and also holds a valid private club
8 license for the premises under article seven, chapter sixty of this
9 code.

10 **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

11 **§60-7-11. Licensee must purchase alcoholic liquors from or**
12 **through commissioner or retail licensee; exceptions.**

13 (a) (1) All licensees shall purchase all alcoholic liquors
14 sold by them from the West Virginia Alcohol Beverage Control
15 Commissioner at prices established by the commissioner for sales of
16 the alcoholic liquors to the public generally or from any retail
17 licensee licensed under the provisions of article three-a of this
18 chapter, except that the licensees may purchase those wines
19 permitted to be sold at retail pursuant to article eight of this
20 chapter from those distributors licensed pursuant to said article
21 at the same prices the distributors sell the wines to retailers
22 licensed pursuant to said article, and distilleries or
23 mini-distilleries licensed under article four, chapter sixty of
24 this code and under this article may sell, if otherwise authorized,
25 alcoholic liquor, other than in sealed packages, for consumption at
26 the private club on the distillery or the mini-distillery premises,

1 if the alcoholic liquor was manufactured on those premises.

2 (2) A licensee may by contract approved by the commissioner
3 receive deliveries of alcoholic liquor from a retail liquor store,
4 and the provisions of sections twelve and thirteen, article six of
5 this chapter shall not apply to the transportation of that
6 alcoholic liquor.

7 (b) In all reports filed under section sixteen, article
8 fifteen, chapter eleven of this code, retail licensees licensed
9 under the provisions of article three-a of this chapter shall
10 separately identify the amount of sales tax on sales of liquor to
11 licensees in the manner required by the Tax Commissioner.

12 (c) Notwithstanding the provisions of section thirty, article
13 fifteen, chapter eleven of this code to the contrary, the amount of
14 the sales taxes collected by the Tax Commissioner shall be
15 deposited in a revolving fund account in the State Treasurer's
16 office, designated the "Drunk Driving Prevention Fund", and
17 administered by the commission on drunk driving prevention, subject
18 to appropriations by the Legislature.

19 **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

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

22 (1) Sell or offer for sale any alcoholic liquors other than
23 from the original package or container;

24 (2) Authorize or permit any disturbance of the peace; obscene,
25 lewd, immoral or improper entertainment, conduct or practice,
26 gambling or any slot machine, multiple coin console machine,

1 multiple coin console slot machine or device in the nature of a
2 slot machine.

3 (3) Sell, give away or permit the sale of, gift to or the
4 procurement of any nonintoxicating beer, wine or alcoholic liquors
5 for or to, or permit the consumption of nonintoxicating beer, wine
6 or alcoholic liquors on the licensee's premises, by any person less
7 than twenty-one years of age;

8 (4) Sell, give away or permit the sale of, gift to or the
9 procurement of any nonintoxicating beer, wine or alcoholic liquors,
10 for or to any person known to be deemed legally incompetent, or for
11 or to any person who is physically incapacitated due to consumption
12 of nonintoxicating beer, wine or alcoholic liquor or the use of
13 drugs;

14 (5) Sell, give or dispense nonintoxicating beer, wine or
15 alcoholic liquors in or on any licensed premises or in any rooms
16 directly connected therewith, between the hours of three o'clock
17 a.m. and ~~one o'clock p.m.~~ ten o'clock a.m. on any Sunday, or
18 between the hours of three o'clock a.m. and seven o'clock a.m. on
19 any weekday or Saturday;

20 (6) Permit the consumption by, or serve to, on the licensed
21 premises any nonintoxicating beer, wine or alcoholic liquors,
22 covered by this article, to any person who is less than twenty-one
23 years of age;

24 (7) With the intent to defraud, alter, change or misrepresent
25 the quality, quantity or brand name of any alcoholic liquor;

26 (8) Sell or offer for sale any alcoholic liquor to any person

1 who is not a duly elected or approved dues paying member in good
2 standing of said private club or a guest of ~~such a~~ a member;

3 (9) Sell, offer for sale, give away, facilitate the use of or
4 allow the use of carbon dioxide, cyclopropane, ethylene, helium or
5 nitrous oxide for purposes of human consumption except as
6 authorized by the commissioner;

7 (10) (A) Employ any person who is less than eighteen years of
8 age in a position where the primary responsibility for such
9 employment is to sell, furnish or give nonintoxicating beer, wine
10 or alcoholic liquors to any person;

11 (B) Employ any person who is between the ages of eighteen and
12 twenty-one who is not directly supervised by a person aged
13 twenty-one or over in a position where the primary responsibility
14 for such employment is to sell, furnish or give nonintoxicating
15 beer, wine or alcoholic liquors to any person; or

16 (11) Violate any reasonable rule of the commissioner.

17 (b) It is unlawful for any licensee to advertise in any news
18 media or other means, outside of the licensee's premises, the fact
19 that alcoholic liquors may be purchased ~~thereat~~ there.

20 (c) Any person who violates any of the foregoing provisions is
21 guilty of a misdemeanor and, upon conviction thereof, shall be
22 fined not less than \$500 nor more than \$1,000, or ~~imprisoned~~
23 confined in ~~the county~~ jail for ~~a period not to exceed~~ more than
24 one year, or both fined and ~~imprisoned~~ confined.

25 **ARTICLE 8. SALE OF WINES.**

26 **§60-8-3. Licenses; fees; general restrictions.**

1 (a) No person may engage in business in the capacity of a
2 winery, farm winery, supplier, distributor, retailer, private wine
3 bed and breakfast, private wine restaurant, private wine spa or
4 wine specialty shop without first obtaining a license from the
5 commissioner, nor shall a person continue to engage in any ~~such~~
6 activity after his or her license has expired, been suspended or
7 revoked. No person may be licensed simultaneously as a distributor
8 and a retailer. No person, except for a winery or farm winery, may
9 be licensed simultaneously as a supplier and a retailer. No person
10 may be licensed simultaneously as a supplier and a private wine bed
11 and breakfast, private wine restaurant or a private wine spa. No
12 person may be licensed simultaneously as a distributor and a
13 private wine bed and breakfast, a private wine restaurant or a
14 private wine spa. No person may be licensed simultaneously as a
15 retailer and a private wine bed and breakfast, a private wine
16 restaurant or a private wine spa.

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

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

21 (2) Twenty-five hundred dollars per year for a distributor's
22 license and each separate warehouse or other facility from which a
23 distributor sells, transfers or delivers wine shall be separately
24 licensed and there shall be collected with respect to each ~~such~~
25 location the annual license fee of \$2,500 as herein provided;

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

1 license;

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

10 (5) One hundred fifty dollars per year for a wine tasting
11 license;

12 (6) One hundred fifty dollars per year for a private wine bed
13 and breakfast license, and each separate bed and breakfast from
14 which a licensee sells wine shall be separately licensed and there
15 shall be collected with respect to each ~~such~~ location the annual
16 license fee of \$150 as herein provided;

17 (7) Two hundred fifty dollars per year for a private wine
18 restaurant license, and each separate restaurant from which a
19 licensee sells wine shall be separately licensed and there shall be
20 collected with respect to each ~~such~~ location the annual license fee
21 of \$250 as herein provided;

22 (8) One hundred fifty dollars per year for a private wine spa
23 license and each separate private wine spa from which a licensee
24 sells wine shall be separately licensed and there shall be
25 collected with respect to each ~~such~~ location the annual license fee
26 of \$150 as herein provided;

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

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

7 (11) One hundred fifty dollars per year for a direct shipper's
8 license for a licensee who sells and ships only wine and \$250 per
9 for a direct shipper's license who ships and sells wine,
10 nonfortified dessert wine, port, sherry or Madeira wines.

11 (12) Three hundred dollars per year for a multicapacity winery
12 or farm winery license which shall enable the holder to operate as
13 a retailer, wine specialty shop, supplier and direct shipper
14 without obtaining an individual license for each capacity.

15 (c) The license period shall begin on July 1 of each year and
16 end on June 30 of the following year and if granted for a less
17 period, the same shall be computed semiannually in proportion to
18 the remainder of the fiscal year.

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

22 (e) No retailer may be licensed as a Class A retail dealer in
23 nonintoxicating beer as provided by article sixteen, chapter eleven
24 of this code: *Provided*, That a delicatessen, a caterer or party
25 supply store which is a grocery store as defined in section two of
26 this article and which is licensed as a Class A retail dealer in

1 nonintoxicating beer may be a retailer under this article:
2 *Provided, however,* That any delicatessen, caterer or party supply
3 store licensed in both ~~such~~ capacities must maintain average
4 monthly sales exclusive of sales of wine and nonintoxicating beer
5 which exceed the average monthly sales of nonintoxicating beer.

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

18 (g) A retailer who has more than one place of retail business
19 shall obtain a license for each separate retail establishment. A
20 retailer's license may be issued only to the proprietor or owner of
21 a bona fide grocery store or wine specialty shop.

22 (h) The commissioner may issue a special license for the
23 retail sale of wine at any festival or fair which is endorsed or
24 sponsored by the governing body of a municipality or a county
25 commission. Such special license shall be issued for a term of no
26 longer than ten consecutive days and the fee therefor shall be \$250

1 regardless of the term of the license unless the applicant is the
2 manufacturer of said wine on a winery or a farm winery as defined
3 in section five-a, article one of this chapter, in which event the
4 fee shall be \$50 if the event is held on the premises of the winery
5 or farm winery. The application for ~~such~~ the license shall contain
6 ~~such~~ information as the commissioner may reasonably require and
7 shall be submitted to the commissioner at least thirty days prior
8 to the first day when wine is to be sold at ~~such~~ the festival or
9 fair. A winery or a farm winery licensed under this subsection may
10 exhibit, conduct tastings or sell samples, not to exceed a
11 reasonable serving of three ounces, and may sell wine ~~only~~ samples
12 for consumption ~~off~~ on the premises during the operation of ~~such~~ a
13 festival or fair, and sell wine for consumption off premises
14 consumption at that same festival or fair: Provided, That for
15 licensed wineries or farm wineries at a licensed festival or fair
16 the tastings, samples and off-premises sales shall occur under the
17 hours of operation as required in this article, except that on
18 Sunday tastings, samples and off-premises sales are unlawful
19 between the hours of 2:00 a. m. and 10:00 a. m. A special license
20 issued other than to a winery or a farm winery may be issued to a
21 "wine club" as defined herein below. The festival or fair
22 committee or the governing body shall designate a person to
23 organize a club under a name which includes the name of the
24 festival or fair and the words "wine club". The license shall be
25 issued in the name of the wine club. A licensee may not commence
26 the sale of wine as provided in this subsection until the wine club

1 has at least fifty dues-paying members who have been enrolled and
2 to whom membership cards have been issued. Thereafter, new members
3 may be enrolled and issued membership cards at any time during the
4 period for which the license is issued. A wine club licensed under
5 the provisions of this subsection may sell wine only to its
6 members, and in portions not to exceed eight ounces per serving.
7 ~~Such~~ The sales shall take place on premises or in an area cordoned
8 or segregated so as to be closed to the general public, and the
9 general public shall not be admitted to ~~such~~ the premises or area.
10 A wine club licensee under the provisions of this subsection shall
11 be authorized to serve complimentary samples of wine in moderate
12 quantities for tasting.

13 A license issued under the provisions of this subsection and
14 the licensee holding ~~such~~ the license shall be subject to all other
15 provisions of this article and the rules and orders of the
16 commissioner relating to ~~such~~ the special license: *Provided*, That
17 the commissioner may by rule, regulation or order provide for
18 certain waivers or exceptions with respect to ~~such~~ the provisions,
19 rules, regulations or orders as the circumstances of each ~~such~~
20 festival or fair may require, including, without limitation, the
21 right to revoke or suspend any license issued pursuant to this
22 section prior to any notice or hearing notwithstanding the
23 provisions of section twenty-seven and twenty-eight of this
24 article: *Provided, however*, That under no circumstances shall the
25 provisions of subsection (c) or (d), section twenty of this article
26 be waived nor shall any exception be granted with respect thereto.

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

4 (i) (A) The commissioner may issue a special license for the
5 retail sale of wine in a professional baseball stadium. A license
6 to sell wine granted pursuant to this subsection entitles the
7 licensee to sell and serve wine, for consumption in a professional
8 baseball stadium. For the purpose of this subsection,
9 "professional baseball stadium" means a facility constructed
10 primarily for the use of a major or minor league baseball
11 franchisee affiliated with the National Association of Professional
12 Baseball Leagues, Inc., or its successor, and used as a major or
13 minor league baseball park. Any special license issued pursuant to
14 this subsection shall be for a term beginning on the date of
15 issuance and ending on the next following June 30, and its fee is
16 \$250 regardless of the length of the term of the license. The
17 application for the special license shall contain information as
18 the commissioner may reasonably require and must be submitted to
19 the commissioner at least thirty days prior to the first day when
20 wine is to be sold at the professional baseball stadium. The
21 special license may be issued in the name of the baseball
22 franchisee or the name of the primary food and beverage vendor
23 under contract with the baseball franchisee. These sales must take
24 place within the confines of the professional baseball stadium,
25 provided that the exterior of the area where wine sales may occur
26 are surrounded by a fence or other barrier prohibiting entry except

1 upon the franchisee's express permission, and under the conditions
2 and restrictions established by the franchisee, so that the wine
3 sales area is closed to free and unrestricted entry by the general
4 public.

5 (B) A license issued under this subsection and the licensee
6 holding the license is subject to all other provisions of this
7 article and the rules and orders of the commissioner relating to
8 the special license: *Provided*, That the commissioner may by rule or
9 order grant certain waivers or exceptions to those rules or orders
10 as the circumstances of each ~~such~~ professional baseball stadium may
11 require, including, without limitation, the right to revoke or
12 suspend any license issued pursuant to this section prior to any
13 notice or hearing notwithstanding sections twenty-seven and
14 twenty-eight of this article: *Provided, however*, That under no
15 circumstances may subsection (c) or (d), section twenty of this
16 article be waived nor shall any exception be granted concerning
17 those subsections.

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

21 (j) A license to sell wine granted to a private wine bed and
22 breakfast, private wine restaurant, private wine spa or a private
23 club under the provisions of this article entitles the operator to
24 sell and serve wine, for consumption on the premises of the
25 licensee, when ~~such~~ the sale accompanies the serving of food or a
26 meal to its members and their guests in accordance with the

1 provisions of this article: *Provided*, That a licensed private wine
2 bed and breakfast, private wine restaurant, private wine spa or a
3 private club may permit a person over twenty-one years of age to
4 purchase wine, consume wine and recork or reseal, using a tamper
5 resistant cork or seal, up to two separate bottles of unconsumed
6 wine in conjunction with serving of food or a meal to its members
7 and their guests in accordance with the provisions of this article
8 and in accordance with regulations promulgated by the commissioner
9 for the purpose of consumption of said wine off premises:
10 *Provided, however*, That for this article, food or a meal provided
11 by the private licensee means that the total food purchase,
12 excluding beverage purchases, taxes, gratuity or other fees is at
13 least \$15: *Provided further*, That a licensed private wine
14 restaurant or a private club may offer for sale for consumption off
15 the premises, sealed bottles of wine to its customers provided that
16 no more than one bottle is sold per each person over twenty-one
17 years of age, as verified by the private wine restaurant or private
18 club, for consumption off the premises. Such licensees are
19 authorized to keep and maintain on their premises a supply of wine
20 in ~~such~~ quantities as may be appropriate for the conduct of
21 operations thereof. Any sale of wine so made shall be subject to
22 all restrictions set forth in section twenty of this article. A
23 private wine restaurant may also be licensed as a Class A retail
24 dealer in nonintoxicating beer as provided by article sixteen,
25 chapter eleven of this code.

26 (k) With respect to subsections (h), (i), (j), (o) and (p) of

1 this section, the commissioner shall promulgate legislative rules
2 in accordance with the provisions of chapter twenty-nine-a of this
3 code with regard to the form of the applications, the suitability
4 of both the applicant and location of the licensed premises and
5 ~~such~~ other legislative rules deemed necessary to carry the
6 provisions of ~~such~~ the subsections into effect.

7 (l) The commissioner shall promulgate legislative rules in
8 accordance with the provisions of chapter twenty-nine-a of this
9 code to allow restaurants to serve wine with meals, and to sell
10 wine by the bottle for off-premises consumption as provided in
11 subsection (j) of this section. Each restaurant so licensed shall
12 be charged an additional \$100 per year fee.

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

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

18 (o) A wine specialty shop under this article may also hold a
19 wine sampling license authorizing the wine specialty shop to
20 conduct special wine sampling events at a licensed wine specialty
21 shop location during regular hours of business. The wine specialty
22 shop may serve up to three complimentary samples of wine,
23 consisting of no more than one ounce each, to any one consumer in
24 one day. Persons serving the complimentary samples must be
25 twenty-one years of age and an authorized representative of the
26 licensed wine specialty shop, winery, farm winery or a

1 representative of a distributor or registered supplier.
2 Distributor and supplier representatives attending wine sampling
3 events must be registered with the commissioner. No licensee,
4 employee or representative may furnish, give or serve complimentary
5 samples of wine to any person less than twenty-one years of age or
6 to a person who is physically incapacitated due to the consumption
7 of alcoholic liquor or the use of drugs. The wine specialty shop
8 shall notify and secure permission from the commissioner for all
9 wine sampling events one month prior to the event. Wine sampling
10 events may not exceed six hours per calendar day. Licensees must
11 purchase all wines used during these events from a licensed farm
12 winery or a licensed distributor.

13 (p) The commissioner may issue special one-day licenses to
14 duly organized, nonprofit corporations and associations allowing
15 the sale and serving of wine when raising money for athletic,
16 charitable, educational or religious purposes. The license
17 application shall contain information as the commissioner may
18 reasonably require and shall be submitted to the commissioner at
19 least thirty days prior to the event. Wines used during these
20 events may be donated by or purchased from a licensed retailer, a
21 distributor or a farm winery. Under no circumstances may the
22 provision of subsection (c), section twenty of this article be
23 waived nor may any exception be granted with respect thereto.

24 (q) The commissioner may issue special licenses to heritage
25 fairs and festivals allowing the sale, serving and sampling of wine
26 from a licensed farm winery. The license application shall contain

1 information required by the commissioner and shall be submitted to
2 the commissioner at least thirty days prior to the event. Wines
3 used during these events may be donated by or purchased from a
4 licensed farm winery. Under no circumstances may the provision of
5 subsection (c), section twenty of this article be waived nor may
6 any exception be granted with respect thereto. The commissioner
7 shall propose rules for legislative approval in accordance with
8 article three, chapter twenty-nine-a of this code to implement the
9 provisions of this subsection.

10 **§60-8-34. When retail sales prohibited.**

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