

**TITLE 175
LEGISLATIVE RULES
ALCOHOL BEVERAGE CONTROL COMMISSIONER**

**SERIES 1
ADVERTISING AND TRANSPORTING**

§175-1-1. General.

1.1. Scope. -- This regulation is promulgated to establish guidelines for the issuance of permits to transport alcoholic beverages in, into and through West Virginia.

1.2. Authority. -- West Virginia Code §29A-3, §60-6-12 and §64-2-60(6)(12)

1.3. Filing Date. -- April 7, 1983

1.4. Effective Date. -- May 10, 1983

§175-1-2. Advertising.

2.1. Definition of "Alcoholic Liquor." -- As used in these regulations, the term "Alcoholic Liquor" shall include alcohol, beer, wine and spirits and any liquid containing more than three and two-tenths percent (3.2%) of alcohol by weight and capable of being used as a beverage.

2.2. General prohibition. -- All advertising of alcoholic liquor which encourages intemperance, induces minors to purchase or tends to deceive or misrepresent, is hereby prohibited.

2.3. Permissible media. -- Printed advertising of alcoholic liquor in West Virginia shall be limited to billboards, newspapers, magazines and similar publications. Radio and television may be used to advertise wine but shall not be used to advertise distilled spirits.

2.4. Application. -- No person engaged in business as a producer, manufacturer, bottler, importer, wholesaler or retailer of distilled spirits, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated in any billboard, newspaper, magazine or similar publication any advertisement of distilled spirits,

unless such advertisement is in conformity with these regulations: Provided, That these provisions shall not apply to the publisher or standardized outdoor advertising company of any billboard, newspaper, magazine or similar publication, unless such publisher or outdoor advertising company is engaged in business as a producer, manufacturer, bottler, importer, wholesaler or retailer of distilled spirits, directly or indirectly, or through an affiliate.

2.5. Definitions. -- As used in this part, terms shall have the meaning ascribed below:

(a) "Advertisement" includes any advertisement of distilled spirits through the medium of billboards, newspapers, magazines or similar publications, except that such term shall not include:

(1) Any label affixed to any container of distilled spirits or any individual covering, carton or other wrapper of such container.

(2) Any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations

(b) "Distilled Spirits" means ethyl alcohol, ethanol or spirits or wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to, neutral spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than twenty-four percent (24%) of alcohol by volume shall be deemed to be distilled spirits.

(c) "Person" means any individual, partnership, joint-stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.6. Mandatory statements.

(a) Responsible advertiser. -- The advertisement shall state the name and address of the producer, manufacturer, bottler, importer or wholesaler responsible for its publication. Street name and number may be omitted in the address.

(b) Class, type and distinctive designation. -- The advertisement shall contain a conspicuous statement of the class and type, or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

(c) Alcoholic content. -- The alcoholic content shall be stated in the manner and form in which it appears on the labels of distilled spirits advertised.

(d) Percentage of neutral spirits and name of commodity. -- In the case of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated in the advertisement the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated in the advertisement the name of the commodity from which such neutral spirits or gin has been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised.

(e) "Line" or "Brand" advertisements. -- Where an advertisement does not mention a specific product but merely refers to a class of distilled spirits such as "Whiskey" and the advertiser markets more than one brand of distilled spirits of that class, or where the advertisement refers to several classes of distilled spirits (such as "Whiskey," "Brandy," "Rum," "Gin," "Liquor," etc.) marketed under a single brand, the only mandatory information prescribed by Section 2.6 hereof applicable to such advertisement would be the name and address of the responsible advertiser.

2.7. Lettering.

(a) Conspicuousness of mandatory statements. -- Statements required by this part to be stated in any written, printed or graphic advertisement shall ap-

pear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible.

In particular:

(1) Required information shall be stated against a contrasting background and in type or lettering which is at least the equivalent of eight (8) point type.

(2) Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(3) Where an advertisement relates to more than one product, the required information shall appear in such a manner as to clearly indicate the particular products to which it is applicable.

(4) Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

2.8. Prohibited statements.

(a) Restrictions. -- An advertisement shall not contain:

(1) Any statement that is false or misleading in any material particular.¹

(2) Any statement that is disparaging of a competitor's product.²

(3) Any statement, design, device or representation which is obscene or indecent.

(4) Any statement, design, device or representation of, or relating to, analyses, standards or tests, irrespective of falsity which is likely to mislead the consumer.³

(5) Any statement, design, device or representation of, or relating to, any guaranty, irrespective of falsity, which is likely to mislead the consumer.

Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form:

"We will refund the purchase price to the purchaser

if he is in any manner dissatisfied with the contents of this package."

Blank to be filled in with the name of person making guaranty.

(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law or regulation of any municipality, county or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(b) Statements inconsistent with labeling. -- The advertisement shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(c) Curative and therapeutic effects. -- The advertisement shall not contain any statement, design or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(d) Place of origin. -- The advertisement shall not represent that the distilled spirits were manufactured in, or imported from, a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer.

(e) Flags, seals, coats of arms, crests and other insignia. -- No advertisement shall contain any statement, design, device or pictorial representation of, or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American Flag, any state flag or any emblem, seal, insignia or decoration associated with any such flag or the Armed Forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flat, seal, coat of arms, crest or other insignia, likely

to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family or individual with whom such flag, seal, coat of arms, crest or insignia is associated.

2.9. Other prohibited statements.

(a) Restrictions. -- An advertisement for distilled spirits shall not contain:

(1) The words "Bond," "Bonded," "Bottled In Bond," "Aged In Bond" or phrases containing these or synonymous terms, unless such words or phrases appear upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they appear upon the label.

(b) Statements of age. -- An advertisement for distilled spirits shall not contain any statement, design or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the labels of the advertised product. When any such statement, design or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy, which does not bear a statement of age on the label, or an advertisement for rum which is four (4) years or more old, may contain general inconspicuous age, maturity or other similar representations, e.g., "Aged In Wood," "Mellowed In Fine Oak Casks."

2.10. Application. -- No person engaged in business as a producer, bottler, importer or wholesaler of wine, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated in any billboard, newspaper, magazine or similar publication, any advertisement of wine unless such advertisement is in conformity with these regulations: Provided, That these provisions shall not apply to the publisher or standardized outdoor advertising company of any billboard, newspaper, magazine or similar publication unless such publisher or standardized outdoor advertising company is engaged in business as a producer, bottler, importer, wholesaler or retailer of wine, directly or indirectly, or through an affiliate.

2.11. Definitions. -- As used in this part, terms shall have the meaning ascribed below:

(a) "Advertisement" includes any advertisement of wine through the medium of billboards, newspapers, magazines or similar publications, except that such term shall not include:

(1) Any label affixed to any container of wine, or any individual covering, carton or other wrapper of such container.

(2) Any editorial or other reading matter in any periodical or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(b) "Wine" means any alcoholic beverage obtained by the fermentation of the natural contents of fruits, or other agricultural products, containing sugar, and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry sake or other product offered for sale or sold as wine.

(c) "Person" means any individual, partnership, joint-stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.12. Mandatory statements.

(a) Responsible advertiser. -- The advertisement shall state the name and address of the producer, bottler, importer or wholesaler responsible for its publication. Street name and number may be omitted in the address.

(b) Class, type and distinctive designation. -- The advertisement shall contain a conspicuous statement of the class and type, or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

2.13. Lettering.

(a) Conspicuousness of mandatory statements. -- Statements required by this part to be stated in any written, printed or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible.

In particular:

(1) Required information shall be stated against a contrasting background and in a type or lettering which is at least the equivalent of eight (8) point type.

(2) Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(3) Where an advertisement relates to more than one product, the required information shall appear in such manner as to clearly indicate the particular products to which it is applicable.

(4) Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

2.14. Prohibited statements.

(a) Restrictions. -- An advertisement shall not contain:

(1) Any statement that is false or misleading in any material particular.⁵

(2) Any statement that is disparaging of a competitor's products.⁶

(3) Any statement, design, device or representation which is obscene or indecent.

(4) Any statements, design, device or representation of or relating to analyses, standards or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.

Nothing in this section shall prohibit the use of an enforceable guaranty in substantially the following form:

"We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."

Blank to be filled in with the name of person making guaranty.

(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law or regulations of any municipality, county or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(b) Statements inconsistent with labeling. -- The advertisement shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

(c) Curative and therapeutic effects. -- The advertisement shall not contain any statement, design or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(d) Place of origin. -- The advertisement shall not represent that the wine was manufactured in, or imported from, a place or country other than that of the actual origin, or was produced or processed by one who was not in fact the actual producer or processor.

(e) Flags, seals, coats of arms, crests and other insignia. -- No advertisement shall contain any statement, design, device or pictorial representation of or relating to, or capable of being construed as relating to, the Armed Forces of the United States, or of the American Flag, any state flag, or of any emblem, seal, insignia or decoration associated with any such flag or the Armed Forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family or individual with whom such flag, seal, coat of arms, crest or insignia is associated.

2.15. Other prohibited statements.

(a) Restrictions. -- An advertisement for wine shall not contain:

(1) Any statement of bonded wine cellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded wine cellar and bonded winery number may be made in the following form: "Bonded Wine cellar No. _____," "Bonded Winery No. _____," "B.W.C. No. _____," "B.W. No. _____."

No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government or any state government specifications or standards.

(2) Any statement, design, device or representation which relates to alcoholic content or which tends to create the impression that a wine is Unfortified" or has been "Fortified," or has intoxicating qualities, or contains distilled spirits (except for a reference to distilled spirits in a statement of composition where such statement is required by these regulations to appear as a part of the designation of the product).

(b) Statement of age. -- No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that:

(1) In the case of vintage wine, the year of vintage may be stated if it appears on the label.

(2) Truthful references of a general and informative nature relating to methods of production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

(c) Statement of bottling dates. -- The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in _____" (inserting the year in which the wine was bottled).

(d) Statement of miscellaneous dates. -- No date, except as provided in Paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto, and direct conjunction therein, in the same size and kind of printing there shall be stated in explanation of the significance of such date: Provided, That if any date refers to the date of establishment of any business, such date shall be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

2.16. Advertising in stores and agencies. -- No store or agency operated by the West Virginia Alcohol Beverage Control Commission shall display, distribute or make use of any advertising matter of any kind or character, insofar as advertising of alcoholic liquors, as defined is concerned.

§175-1-3. Manufacturers.

3.1. License. -- Applicants for manufacturers' licenses (as a distillery, winery, brewery, bottling plant and industrial plant) under chapter sixty of the West Virginia Code of 1931, as amended, are to furnish to the Commissioner, at the time application is made, the following information in addition to that required in the Commissioner's application form for such license:

(1) Copy of all information filed and all information proposed to be filed by the applicant with the Federal Alcohol Administration.

(2) Copy of all information filed and all information proposed to be filed by the applicant with the United States Department of the Treasury, Internal Revenue Service.

(3) The applicant shall swear to the truth and correctness of the above required information.

(4) The foregoing requirements shall apply to original applicants only.

(5) The application for manufacturing license and notice of intent to apply for license shall be in the form set forth below:

**NOTICE OF APPLICATION FOR LICENSE
UNDER THE PROVISIONS OF CHAPTER 60,
ARTICLE 4, SECTION 10 OF THE CODE OF
WEST VIRGINIA FOR THE MANUFACTURE OF
ALCOHOLIC LIQUORS**

To Whom It May Concern:

Notice is hereby given that

_____ will, not more than thirty (30) days nor less than ten (10) days from date hereof, file with the West Virginia Liquor Control Commissioner at Charleston, West Virginia, its formal application under the provisions of Chapter 60, Article 4, Section 2 of the Code of West Virginia known as the Liquor Control Act for license to conduct the business of operating a

_____ for the manufacture of alcoholic liquors at the manufacturing plant of the applicant at _____ County, West Virginia.

Date at _____,
West Virginia, this _____ day of _____, 19 _____.

**NOTICE OF APPLICATION FOR LICENSE
UNDER THE PROVISIONS OF CHAPTER 60,
ARTICLE 4, SECTION 10 OF THE CODE OF
WEST VIRGINIA FOR THE MANUFACTURE OF
ALCOHOLIC LIQUORS**

To Whom It May Concern:

Notice is hereby given that

_____ will, not more than thirty (30) days nor less than ten (10) days from date hereof, file with the West Virginia Liquor Control Commission at Charleston, West Virginia, its formal application under the provisions of Chapter 60, Article 4, Section 2 of the Code of West Virginia known as the Liquor Control Act for license to conduct the business of operating a

_____ for the manufacture of alcoholic liquors at the manufacturing plant of the applicant at

_____ County, West Virginia.

Dated at _____,
West Virginia, this _____ day of _____, 19 _____.

3.2. Change of style of bottles. -- Before any manufacturer or vendor furnishing alcoholic liquor to the Commissioner shall change the style or type of bottle or other container in which such alcoholic liquors are being supplied, the manufacturer and/or vendor shall first obtain the Commissioner's written approval of such change by first submitting to the Commissioner a sample of bottle or other container currently in use and a sample of the bottle or other container proposed to be used.

§175-1-4. Posting of blood-alcohol chart.

4.1. A blood-alcohol chart, as prescribed by the provisions of section twenty-four, article six, chapter sixty of the West Virginia Code, which chart shall be provided or approved by the Commissioner, shall be posted in every establishment in West Virginia which sells or offers for sale alcoholic beverages or nonintoxicating beer, either for on-premise or off-premise consumption. The size of the chart shall be no less than 10 inches by 13 inches.

4.2. Every Alcohol Beverage Control Commission retail store and agency shall post and display prominently the blood-alcohol chart prescribed and furnished by the Commissioner. Such chart shall be so posted to be readily accessible and easily readable by the patrons of such store and agency or other members of the general public who may be upon the premises.

4.3. Every Alcohol Beverage Control Commission licensed private club shall post prominently the blood-alcohol chart, which chart shall be so posted so as to be readily accessible and easily readable by the members and guests of such licensed private club.

4.4. Every retailer licensed to sell wine pursuant to the provisions of article eight, chapter sixty of the West Virginia Code, shall prominently display during the hours for which the retail sale of wine is permitted the blood-alcohol chart at or near that portion of the retail establishment devoted to the sale and/or display of any wine sold by such retailer. In the event any such retailer shall have wine displayed for sale at more than one location within the licensed premises, or have multiple points of sale, or multiple points of

ingress or egress from the licensed premises, then such retailer may be required to display additional blood-alcohol charts at or near the displays, points of sale or store exits.

4.5. The provisions of this subsection shall also apply to every licensed farm winery. The licensee shall be responsible for the prudent care of such blood-alcohol chart and for assuring that the chart is displayed in accordance with the provisions of this regulation.

§175-1-5. Miscellaneous.

5.1. Transportation permits.

(a) Before any person shall transport, for hire, alcoholic liquors in quantities in excess of one (1) gallon within, into or through the State of West Virginia, such person shall give a surety bond, approved by the Attorney General as to form and execution, and by the West Virginia Alcohol Beverage Control Commissioner as to sufficiency, payable to the State of West Virginia in the penalty of one thousand dollars (\$1,000) conditioned that such person will exercise the privileges granted by such permit in conformity with the provisions of the Liquor Control Act and the regulations of the Commissioner, or in default thereof forfeit to the state school fund the sum of one hundred dollars (\$100) for each breach recoverable by motion upon ten (10) days notice in any court having jurisdiction of the parties. Each person transporting alcoholic liquors in addition to the bond aforesaid shall pay unto the West Virginia Alcohol Beverage Control Commissioner an annual fee of ten dollars (\$10.00) for the first permit and one dollar (\$1.00) for each duplicate permit so issued. In the case of motor carriers for hire, a permit issued by the Commissioner under seal showing that the required bond has been given and the fee paid shall accompany the alcoholic liquors at all times during transportation. In the case of air carriers and rail carriers for hire, a permit issued by the Commissioner under seal showing that the required bond has been given and the fee paid shall be filed in the principal office of such carrier in this State.

(b) Any wine distributor or wine retailer, licensed pursuant to the provisions of article eight, chapter sixty of the West Virginia Code of 1931, any private club, licensed pursuant to the provisions of article seven, chapter sixty of the West Virginia Code, and any representative licensed under the provisions

of section twenty-two, article four, chapter sixty of the West Virginia Code, by virtue of their license as such, may transport within West Virginia any alcoholic beverages which are deemed to be transported in connection with the purpose for which such license was granted. The aforesaid licensees designated in this subsection may not transport any alcoholic beverages which are not deemed to be transported in connection with the purpose for which such license was granted without a transportation permit issued by the Commissioner.

(c) All permits provided for herein shall be issued for the period of the calendar year, and the fee therefor shall not be prorated.

FOOTNOTES

¹Reproduction of medals or facsimiles of awards, when no medals or awards have been given or where the medals or awards were not given on a competitive or comparative basis.

²"Contains no neutral spirits or alcohol" or

"This rum will not turn dark in the bottle."

³"Analyzed by the _____ Laboratory and found to be pure and free from deleterious ingredients," or "Tested and approved." Signed by the _____ Research Institute.

⁴Examples of such statements are: (a) "_____ is good for you." (b) "Conducive to well-being."

⁵Example of such prohibited statements: "Genuine sherry is made only in Spain."

⁶Example of such prohibited statements: "All good wines are bottled at the winery."

⁷Example of such prohibited statements: "Tested and approved." Signed by the _____ Research Institute."

⁸Examples of such prohibited statements are: "Be healthy drink _____," "_____, a tonic or digestive."