

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box
FEB 23 3 23 PM '99
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Alcohol Beverage Control Administration TITLE NUMBER: 175

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§ 29A-3-15 and 60-3A-6(c)(2)

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Licensing of Retail Liquor Stores

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

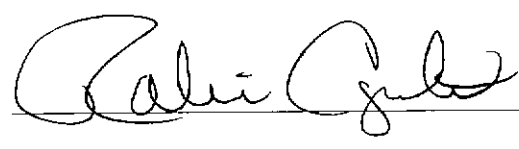
TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 24, 1999 AT 9:00 a.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donald Stemple, Commissioner
Alcohol Beverage Control Administration
322 70th Street S.E.
Charleston, WV 25304-2900

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$10.00

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: TITLE 175 - SERIES 5 - LICENSING OF RETAIL LIQUOR STORES

Type of Rule: EMERGENCY
 Legislative Interpretive Procedural

Agency: ALCOHOL BEVERAGE CONTROL ADMINISTRATION

Address: 322 70TH STREET, S. E.
CHARLESTON, WV 25304

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	\$252,000	0	0

2. Explanation of Above Estimates: ENROLLED H.B. 3023 OBJECTIVES REQUIRE INCREASED PROFESSIONAL ACCOUNTING AND LEGAL EXPENSES ACQUIRED ON A CONTRACTUAL BASIS.
3. Objectives of These Rules: TO CARRY OUT THE INTENT OF THE LEGISLATURE TO HAVE NEW 10-YEAR RETAIL LIQUOR STORE LICENSES BE SOLD BEFORE JULY 1, 2000 IN ORDER TO RECEIVE SALES PROCEEDS OF AT LEAST 19 MILLION DOLLARS FOR THE STATE FUND, GENERAL REVENUE AND, IN ADDITION, TO THEREAFTER FIX WHOLESALE PRICES ON AN ANNUAL BASIS TO PRODUCE 6.5 MILLION DOLLARS PROFIT WHICH IS DEPOSITED TO THE STATE FUND, GENERAL REVENUE.

Rule Title: TITLE 175 - SERIES 5

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

WILL RESULT IN 25.5 MILLION DOLLARS FOR DEPOSIT IN THE STATE FUND, GENERAL REVENUE DURING FY 2000 AND 6.5 MILLION DOLLARS FOR YEARLY DEPOSITS IN THAT FUND FOR NINE MORE YEARS.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

NONE KNOWN.

C. Economic Impact on Citizens/Public at Large.

NONE KNOWN.

Date: NOVEMBER 23, 1999

Signature of Agency Head or Authorized Representative:

Donald L. Stemple



**STATE OF WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

322 70th Street, SE
Charleston, West Virginia 25304-2900

CECIL H. UNDERWOOD
GOVERNOR

DONALD L. STEMPLER
COMMISSIONER

ROBIN CAPEHART
SECRETARY OF TAX & REVENUE

SUMMARY OF PROPOSED EMERGENCY RULE

This Rule will make it possible for the ABCA and the State Retail Liquor Licensing Board to sell new 10-year franchises to operate retail liquor stores after the existing franchises expire on June 30, 2000. An objective of this Rule is to provide guidelines for the selling of the franchises for a minimum of 19 Million Dollars in the state fund, general revenue which is projected by the Governor's official revenue estimates for fiscal year 2000.

In addition, this rule explains and clarifies the procedures to be used in the establishment of minimum bids for each franchise; the number and types of Class A and Class B licenses to be authorized in each market zone; bidding procedures; award of residential preferences of five percent (5%) of the bid price; award of an additional preference of five percent (5%); and methodology for selecting the successful bidders.

MARCH 25 3 20 11 '99
OFFICE OF THE SECRETARY OF STATE

**EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATION
ALCOHOL BEVERAGE CONTROL ADMINISTRATION COMMISSION
TITLE 175 - SERIES 5**

LICENSING OF RETAIL LIQUOR STORES

PROPOSED RULE

§ 175-5-1. General.

1.1. Scope. This emergency legislative rule explains and clarifies the State Retail Liquor License Act, as stated in W. Va. Code § 60-3A-1, *et seq.*, as extensively amended by Enrolled House Bill 3023 which was enacted by the West Virginia Legislature on March 13, 1999, to take effect from passage. The amendments in this bill necessitate emergency amendments to West Virginia Legislative Rule, Alcohol Beverage Control Administration, Title 175 - Series 5, Licensing Of Retail Liquor Stores.

1.2.. Authority. - This emergency legislative rule is promulgated under the authority of W. Va. Code §§29A-3-15 and 60-3A-6(c)(2).

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Type of rule. - This rule is an emergency legislative rule as defined in W. Va. Code §29A-3-15.

1.6 Citation. - This emergency rule may be cited as 175 C.S.R. 5, § ___ (1999).

§175-5-1. Short Title.

This rule shall be known and may be cited as the "State Retail Liquor License Rule."

§ 175-5-2. Legislative Findings and Declarations; Legislative Purpose.

2.1. It is the intent of the Legislature 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.

2.2. It is the purpose of the Legislature in providing for the retail sale of liquor to:

2.2.1. Continue revenue to the State from the wholesale sale of liquor, by requiring all retail licensees to purchase all liquor (other than wine with an alcohol content of fourteen percent (14%) or less by volume) from the Commissioner and by further requiring all private clubs licensed under the provision of W. Va. Code §60-7-1, *et seq.*, to purchase all liquor (other than wine with an alcohol content of fourteen percent (14%) or less by volume) from retail licensees;

2.2.2. 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;

2.2.3. Preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor; and

2.2.4. Obtain for the State financial gain from the issuance of retail licenses;

§175-5-2a. Further Legislative Findings, Declarations and Purpose.

2a.1. In addition to the findings and declarations of the Legislature set forth in W. Va. Code §60-3A-2, the Legislature, in 1999, further found and declared that:

2a.1.1. It was the intent of the Legislature when the Retail Liquor Licensing Act was enacted in 1990, that all retail licenses issued for the 10-year period beginning July 1, 1990 shall expire as of July 1, 2000, and that issuance of retail licenses for the 10-year period beginning July 1, 2000, and for each 10-year period thereafter, shall be based on sealed competitive bids.

2a.1.2. It is the intent of the Legislature to provide that all retail licenses issued for the 10-year period beginning July 1, 2000, shall expire as of July 1, 2010, and that retail licenses issued for the 10-year period beginning July 1, 2000, and each 10-year period shall be based on sealed competitive bids.

2a.1.3. The purposes set forth W. Va. Code § 60-3A-2(b) remain the purposes of the Legislature.

2a.1.4. Many of the current retail licensee have not only provided services to the public contemplated by the Retail Liquor Licensing Act, but in many instances have provided employment and otherwise made substantial contributions to the economic and civic development of the communities in which they conduct business. Therefore, current retail licensees should be afforded special consideration if their bids for the licenses issued for the 10-year period beginning July 1, 2000 are unsuccessful.

2a.1.5. Those persons who are issued a retail license for the 10-year period beginning July 1, 2000, and for any 10-year period thereafter, should also be afforded special consideration if their bids for a retail license are unsuccessful; and

2a.1.6. Further statutory changes are desirable to effect the purposes set forth in W. Va. Code § 60-3A-2.

2a.2. It is the further purposes of the Legislature in providing for the retail sale of liquor to:

2a.2.1. Require that all licenses issued for the period beginning July 1, 2000, and for each 10-year period thereafter shall be based on sealed competitive bids;

2a.2.2. Provide current licensee who, having bid in the manner required by the provisions of the Retail Liquor Licensing Act, fail to submit the highest bid for license for the 10-year period beginning July 1, 2000, and then current licensees for each 10-year period thereafter, an additional opportunity to obtain the license; and

2a.2.3. Effect statutory changes to further the purposes provided in W. Va. Code §§ 60-3A-2 and 60-3A-2a.

§175-5-3. Sale of Liquor by Retail Licensees Permitted; Cessation of Retail Sale of Liquor by State; Exception.

3.1 ~~Notwithstanding any provision of the Code of West Virginia of 1931, as amended, to the contrary, the~~ The sale of liquor by retail licensees in accordance with the provisions of W. Va. Code §60-3A-1, *et seq.*, and ~~this rule~~ shall be lawful.

3.2 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 such market zone so long as a retail outlet is in operation in such market zone.

3.3 ~~The Commissioner may, with the consent of the Retail Liquor Licensing Board, operate a State liquor store in a market zone pursuant to the provisions of W. Va. Code §60-3-1, et seq., where there are no retail outlets in operation and where 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.~~

§175-5-4. Definitions. As used in these ~~this~~ emergency regulations ~~rule~~ and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and the plural.

4.1. "Alcohol" means ethyl alcohol, whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.

4.2. “Alcohol Beverage Control Commissioner,” or “~~ABCC~~” “ABCA” means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his or her delegate.

4.3. “Alcoholic liquor” or “liquor” means alcohol, beer, fortified wine and distilled spirits, and any liquid or solid capable of being used as a beverage, but shall not include wine with an alcohol content of fourteen percent (14%) or less by volume, nonintoxicating beer or nonintoxicating beverages.

4.4. “Applicant” means any person 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 the Retail Liquor Licensing Act and this rule.

4.5. “Application” means the form prescribed by the Commissioner which must be filed with the Commissioner by any person bidding for a retail license.

4.6. “Board” means the retail liquor licensing Board created by article W. Va. Code, § 60-3A-5.

4.7. “Class A retail license” means a retail license permitting the retail sale of liquor at more than one retail outlet.

4.8. “Class B retail license” means a retail license permitting the sale of liquor at only one retail outlet.

~~4.9. “Code” means the Code of West Virginia of 1931, as amended.~~

4.9. “Current licensee” means a person who holds a retail license on March 13, 1999, at the time of the reenactment of this section in the year one thousand nine hundred ninety-nine or that person’s successor or any person who holds a retail license when it expires at the end of a ten 10-year period.

4.10. “Designated areas” mean one or more geographic areas within a market zone designated as such by the Board.

4.11. “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, natural 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.

4.12. “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 application or retail licensee who performs a policy making function.

4.13. “Fortified wine” means any wine to which brandy or other alcohol has been added and includes dessert wines which are not fortified and any wine containing greater than fourteen percent (14%) by volume.

4.14. “Intoxicated” means having one’s faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

~~4.15. “Liquor” means alcoholic liquor as defined in W.Va. Code §60-1-5 section five, article one of this chapter, and also includes both wine and fortified wines as those terms are defined in W. Va. Code §60-8-2.~~

~~4.15.~~ 4.16. “Market zone” means a geographical area designated as such by the Board for the purpose of issuing retail licenses.

~~4.16.~~ 4.17. “Nonintoxicating beer” means any beverage, obtained by the fermentation of barley, malt, hops, or similar products or substitute and containing at least one half of one percent (.5%) alcohol by volume, but not more than four and two-tenths percent (4.2%) of alcohol by weight, or six percent (6%) by volume, whichever is greater.

~~4.17.~~ 4.18. “Original package” means any closed or sealed container or receptacle used for holding alcoholic liquor.

~~4.18.~~ 4.19. “Person” means any an individual, partnership, joint stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

~~4.19.~~ 4.20. “Public place” means any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, That the term “public place” shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of W. Va. Code Chapter 60 to sell alcoholic liquors for consumption on the premises.

~~4.20.~~ 21. “Retail license” means a license issued under the provisions of W. Va. Code, 60-3A-1, *et seq.*, permitting the sale of liquor at retail.

~~4.21.~~ 4.22. “Retail licensee” means the holder of a retail license.

4.22. 4.23. “Retail outlet” means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of W. Va. Code, 60-3A-1, *et seq.*

~~4.23.~~ 4.24. “Secretary” means the Secretary of the West Virginia Department of Tax and Revenue.

4.24: ~~4.25.~~ “State” means the State of West Virginia .

~~4.25.~~ ~~4.26.~~ “Wine” means any beverage obtained by the fermentation of the natural content 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 containing not less than seven percent (7%) nor more than twenty-four percent (24%) alcohol by volume.

§ 175-5-5. Creation of Retail Liquor Licensing Board; Members, Terms, Meetings and Officers; General Provisions.

5.1. ~~W. Va. Code §60-3A-5 created~~ ~~continued~~ ~~the~~ . The State Retail Liquor Licensing Board, ~~such Board being~~ is composed of five (5) members, three (3) of whom are appointed by the Governor by and with the advice and consent of the Senate, one (1) of whom being the Secretary of Tax and Revenue, and one (1) of whom being the Commissioner. The Secretary of Tax and Revenue and the Commissioner serve as the chairman and secretary, respectively, of the Board. No more than two (2) of the three (3) members appointed by the Governor may be of the same political party. Beginning with the appointments made to fill vacancies after the amendment to W. Va. Code §60-3A-5 in 1999 one thousand nine hundred ninety-nine, a member shall be appointed from each congressional district as delineated in accordance with W. Va. Code §1-2-3 section three, article two, chapter one of this code. No member of the Board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.

5.2. The provisions of W. Va. Code §60-3A-5(b) and §175-5-5.2 of these rules apply to the three (3) members appointed by the Governor. They shall be appointed for overlapping terms of three (3) years each and until their respective successors have been appointed and have qualified. , ~~except for the original appointments:~~

~~5.2.1 For the purpose of original appointments, one (1) member shall be appointed for a term of three (3) years and until his or her successor has been appointed and has qualified, one (1) member shall be appointed for term of two (2) years and until his or her successor has been appointed and has qualified and one (1) member shall be appointed for a term of one (1) year and until his or her successor has been appointed and qualified.~~

5.2.1. Members may be reappointed for any number of terms.

5.2.2. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by West Virginia Constitution Article IV, §5. Vacancies shall be filled by appointment by the Governor in the case of death, resignation, incompetency, neglect of duty, gross immorality or malfeasance in office.

5.2.3. Members shall receive compensation of one hundred dollars (\$100.00) 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.

5.3. A majority of members of the Board constitutes a quorum and meetings shall be held at the call of the chairman.

5.4. Staff, office facilities and costs of operation of the Board shall be provided by the Commissioner.

§ 175-5-6. General Powers and Duties of Board and Commissioner.

6.1. 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, and, if deemed necessary or desirable by the Board, to create one or more designated areas within such market zones for the issuance of Class B retail licenses.

~~6.2. The Board shall establish minimum bids for each retail liquor license available for the 10-year period starting July 1, 2000, beginning with the ten-year period starting July 1, two t~~

~~6.2.1. Minimum bids shall be determined by the Board prior to accepting bids for Class A and Class B licenses for the ten 10-year period beginning July 1, 2000, the first day of July, two thousand, and in succeeding ten 10-year periods.~~

~~6.2.2. The Board shall determine the minimum bid for each license based upon a review of the ABCA wholesale sales to each retail outlet permitted to operate under the license and such other factors as the Board may determine to generate the revenues from license renewal projected by the Governor's official revenue estimates for fiscal year two thousand as presented to the regular session of the Legislature in the year one thousand nine hundred ninety-nine: 1999.~~

~~6.2.3. The Board may reject a bid if the highest bid fails to meet the minimum bid.~~

~~6.2.4. The Board may reject any or all bids in a market zone where the minimum aggregate bid for the market zone is not met. The Board must first apply the preference afforded to a State resident under W. Va. Code §60-3A-10a and §175-5-10a of these rules~~

6.2.3. The Commissioner shall:

6.2.3.1. Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and time table for investigating, processing and approving applications;

6.2.3.2. Develop a form of retail license to be issued to each retail licensee under the provisions of W. Va. Code §60-3A-6(b)(2) and this rule;

6.2.3.3. Disseminate to the public information relating to the issuance of retail licenses;

6.2.3.4. Promulgate standards for advertising the sale, availability, price and selection of liquor;

6.2.3.4.1. Standards for advertising are set forth in West Virginia Legislative Regulations Rule, Alcohol Beverage Control Administration, Title 175 - Series 1, Section 6, Retail Store Operations.

6.2.3.5. Set minimum standards for retail outlets regarding the amount and variety of alcoholic liquors which they must offer for sale at each retail outlet;

6.2.3.6. Enforce the provisions of W. Va. Code §60-3A-1, *et seq.*, and this rule.

6.2.3.7. Impose civil penalties upon retail licensees;

6.2.3.7.1. The procedures to be followed by the Commissioner in imposing civil penalties upon retail licensees are set forth and explained in detail in Section 26 of this rule.

6.2.3.8. Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of ~~such~~ each retail licensee with the provisions of W. Va. Code §60-3A-1, *et seq.*, and any rules promulgated by the Board or the Commissioner pursuant to the provisions of W. Va. Code §60-3A-6.

6.2.3.9. Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of W. Va. Code §§60-3A-26 or ~~60-3A-27~~ or 60-3A-28 and §§175-5-26 or ~~175-5-27~~ or 175-5-28 of this rule which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees and shall be enforced in the manner specified in W. Va. Code §29A-5-1 with like effect as if §29A-5-1 was set forth in extenso in W. Va. Code § 60-3A-1, *et seq.*, and this rule.

6.2.3.10. Settle, through the hearing procedure provided in §175-5-28a disputes relative to the boundaries of market zones and designated areas within market zones.

6.3.4. The Board and the Commissioner shall each:

6.3.4.1. Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under W. Va. Code §60-3A-1, *et seq.*, and this rule; and

6.3.4.2. Adopt, amend or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of ~~West Virginia~~ W. Va. Code article §60-3A-1, *et seq.*, and these rules as they may deem necessary or desirable for the public interest in carrying out the provisions of the Retail Liquor License Act and this rule, ~~said article and these rules~~. Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a [§ 29-1-1, *et seq.*] of the W. Va. Code, the provisions of all of which are

incorporated in this rule by reference.

§175-5-7. Market Zones; Class A and Class B Retail Licenses.

~~7.1. The Board shall determine the number of and establish market zones for the retail sale of liquor within this State. For each market zone so established, the Board shall designate whether one (1) Class A retail license or one (1) or more Class B retail licenses, or both, shall be issued for the zone.~~

~~7.1.1. Each Class A retail license shall permit the holder thereof to operate such number of Class A retail outlets as the Board shall have authorized for that market zone.~~

~~7.1.2. If the Board determines to issue one (1) or more Class B licenses, the number of Class B retail licenses to be issued by the Commissioner within the market zone shall not exceed fifty percent (50%) of the number of retail outlets authorized for the Class A retail license for such market zone. Provided, That in a market zone where the number of retail outlets authorized under the Class A retail license is an odd number, the number of Class B retail licenses which may be issued in such market zone shall be rounded up to the next highest whole number following that number which is equal to fifty percent (50%) of the number of retail outlets authorized under such Class A retail license.~~

7.1. The market zones established by the Board for the retail sale of liquor within this State under the enactment of W. Va. Code §60-3A-7 in 1999 one thousand nine hundred ninety may not be modified by the Board unless authorized by the Legislature.

7.1.1. Market zone boundaries established by the Board on June 1, 1990 will not be affected by any changes in municipal boundaries, tax district boundaries or any other boundaries utilized in establishing such market zones.

7.2. For each market zone established, the Commissioner may issue one Class A retail license and one or more Class B retail licenses.

7.2.1. Each Class A retail license shall permit the holder of the license to operate the number of retail outlets the Board authorizes for that market zone.

7.2.2. An applicant who becomes a successful bidder for a Class A2, A3, A4, or A5 10-year retail license to become effective on July 1, 2000 shall be required to open all authorized retail stores for each of such licenses within sixty (60) days following July 1, 2000 or within sixty (60) days following the date upon which he/it is issued a Class A retail license, whichever comes last. The holder of such a license shall operate each of the authorized retail stores for a minimum period of one year

7.2.3. The number of Class B retail licenses to be issued by the Commissioner within each market zone shall not exceed fifty percent (50%) of the number of retail outlets authorized for the Class A retail license for that market zone, except as otherwise authorized by

W. Va. Code §§60-3A-7(e) or 60-3A-27a; Provided, That, except as authorized by W. Va. Code §§60-3A-7 or 60-3A-27a. However, in a market zone where the number of retail outlets authorized under the Class A retail license 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 fifty percent (50%) of the number of retail outlets authorized under the Class A retail license.

7.3. If the Board determines that a market zone is not suited for the issuance of a Class A retail license, then only Class B retail licenses may be authorized for that market zone, and The Board shall determine the maximum number of Class B retail licenses which may be issued for that market zone.

7.4. 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 W. Va. Code §60-3A-7(a) and §175-5-7.2.2. of this rule these rules for that market zone, except as authorized by W. Va. Code §§60-3A-7(e) and 60-3A-27a.

7.5. A person may hold one (1) or more Class A retail licenses and one (1) or more Class B retail licenses, but for the same market zone no person shall hold a Class A retail license and a Class B retail license or more than one Class B retail license. Additionally, a person who holds a Class A license may not establish a retail outlet in another retail licensee's Class B designated area.

7.6. Notwithstanding any provisions of W. Va. Code §§60-3A-7(a) or 60-3A-7(c), no later than sixty (60) days prior to the receipt of the bids described in W. Va. Code §60-3A-10(b), the Board may authorize the Commissioner to issue an additional Class B license in a market zone for the ten-year period which begins the next following first day of July, after the Board has made the following findings:

7.6.1. Each outlet authorized to operate in the market zone has been open and in operation for not less than one year;

7.6.2. Changes in economic and demographic factors, including substantial population increases within the market zone, clearly demonstrate the need for an additional retail outlet or outlets within the market area to meet an increase in consumer demand; and

7.6.3. The issuance of an additional Class B license in the market zone will not significantly impair the efforts to procure the revenues described in W. Va. Code §60-3A-10b(b).

7.7. The Board shall establish the minimum bid for any additional Class B licenses authorized under W. Va. Code §60-3A-7(e).

7.8. No person may hold a combination of licenses that, in the aggregate, authorizes the operation of more than twenty-five percent (25%) of the total number of retail outlets authorized under the provisions of this article W.Va. Code §60-3A-7 to operate in this State.

§ 175-5-8. Retail License Application Requirements; Retail Licensee Qualifications.

8.1. Prior to or simultaneously with the submission of a bid for a retail license, each applicant shall file an application with the Commissioner, stating under oath the following:

8.1.1. If the applicant is an individual, his or her name and residence address;

8.1.2. ~~If the applicant is a corporation, limited partnership, partnership or association:~~
If the applicant is other than an individual:

8.1.2.1. The name and business address of the applicant;

8.1.2.2. The State of its incorporation or organization;

8.1.2.3. The number, either federal employer number or social security account number, it uses for tax identification;

8.1.2.4. ~~The names and residence addresses of each executive officer and Director or general partner of such entity; other principal officer, partner or member of the entity;~~

~~8.1.2.5.~~ 8.1.2.5. A copy of the entity's charter or other agreement under which the entity operates;

8.1.2.5 ~~6.~~ The names and residence addresses of any person owning, directly or indirectly, at least twenty percent (20%) of the outstanding stock, ~~of or~~ partnership, or other interests in such applicant.

8.1.2.6: ~~7.~~ The market zone or market zones county or counties where the applicant is considering the conduct of liquor sales, if successfully licensed; and

8.1.3. 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 (20%) of the outstanding stock, partnership or other interests in the applicant has been convicted; and

8.1.4. The application shall include a Statement by the applicant consenting to the conduct of a background investigation by the Commissioner.

8.2. An applicant shall provide to the Commissioner any such additional information ~~as the Commissioner may request~~ requested by the Commissioner;

~~8.2.1. A certified copy of the applicant's application for the Wholesale Dealers In Liquor Tax Stamp must be filed with the application for a retail liquor license.~~

~~8.2.2. If the applicant for a retail license holds a Federal Basic permit, the Wholesale Dealers In Liquor Tax Stamp and/or the Retail Dealers In Liquor Tax Stamp, only the applications upon which such permit and tax stamps were issued must be submitted with the application for the retail license.~~

8.3. Whenever a change occurs in any information provided to the Commissioner, the applicant change shall immediately be reported to the change to the Commissioner in the same manner as originally provided. However, the bids are awarded, only the successful bidders shall have an ongoing duty to report any change in information previously reported to the Commissioner.

8.4. The Commissioner shall disqualify each bid submitted by an applicant under W. Va. Code §60-3A-10 and §175-5-10 of this rule, and no applicant shall be issued or be eligible to hold a retail license under this article, if:

8.4.1. 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

8.4.2. Any executive officer ~~Director~~ or general partner applicant, or other principal officer, partner or member of the applicant, or any person owning, directly or indirectly, at least twenty percent (20%) of the outstanding stock, of or 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.

~~8.5. Federal rules require a person who purchases alcoholic liquors for resale to obtain a basic permit and certain tax stamps Retail Stamp from the Bureau of Alcohol, Tobacco and Firearms by paying a Retail Special Occupation Tax in the amount of \$250.00 annually beginning July 1st of each year. If more than one retail outlet is operated by that person, the Retail Stamp shall be purchased for each outlet.~~

~~8.5.1. A basic permit will be issued if:~~

~~8.5.1.1. Such person (or in the case of a corporation, any of its officers, Director s or principal stockholders) has not, within five (5) years prior to the date of application been convicted of a felony under federal or State law, and has not, within three (3) years prior to the date of application been convicted of a misdemeanor or under any Federal law relating to liquor, including the taxation thereof; and~~

~~8.5.1.2. Such person, by reason of his business experience, is likely to commence business as a retail licensee within a reasonable period and to maintain such business activities in conformity with Federal law; and~~

~~8.5.1.3. The business activities proposed are not in violation of the laws of West Virginia.~~

~~8.5.1.4. In order to obtain the basic permit for wholesalers and retailers of alcoholic liquors, an applicant must provide the Bureau of Alcohol, Tobacco and Firearms with the name, including trade name or names, if any, and the address of the applicant; the kind of permit applied for and the location of the business; whether the applicant is an individual, a partnership or a corporation; if a partnership, the name and address of each partner; if a corporation, the name and address of each of the principal officers and of each shareholder owning ten percent (10%) or more of the corporate stock.~~

~~8.5.2. The retail licensee will be required to purchase the following federal tax stamps:~~

~~8.5.2.1. A person who purchases alcoholic liquors for resale and such resales will be wholesale sales, such as to private clubs, is required to register for and obtain a wholesale dealer in liquors tax stamp. The tax stamp must be obtained before engaging in any business which will involve the wholesale sale of alcoholic liquors. The cost of this tax stamp is \$500 per year.~~

8.5. A person who purchases alcoholic liquors for resale and such resales will be retail sales, such as sales to consumers, is required to register for and obtain a retail dealer in liquors tax stamp from the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms. This stamp must be obtained before engaging in any business which will involve the retail sales of alcoholic liquors. The cost of this tax stamp is two hundred and fifty dollars (\$250) per year.

8.5.1. Current licensees who are successful bidders will have an opportunity to have this stamp renewed and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms will notify those licensees as to when they must renew.

8.5.2. Successful bidders who are not current licensees shall be required to submit Bureau of Alcohol, Tobacco and Firearms Form ATFF 5630.5, Special Tax Registration And Return, to Bureau of ATF, P.O. Box 371962, Pittsburgh, PA 15250-7962 and enclose a check or money order for Two Hundred Fifty Dollars (\$250.00) to pay the Retail Special Occupation Tax which will result in the issue of a Retail Dealer In Liquors Tax Stamp. This stamp must be purchase for and displayed in each retail store before a retail licensee can engage in the retail sale of liquor, distilled spirits, wine or beer.

8.5.3. An applicant must apply for the basic permit and register for the foregoing dealer Classifications and Federal tax stamps in a manner sufficiently timely so that such

documents will be provided within twenty (20) days after the applicant is notified of being the successful bidder:

8.6 The Commissioner shall not issue a retail license to an applicant which does not hold a license issued by the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms pursuant to Federal law to sell liquor at wholesale.

8.6.1. Current licensees who are successful bidders and who hold a Federal Wholesaler's Permit and Wholesale Dealer In Liquors Tax Stamp will have an opportunity to have this stamp renewed and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms will notify those licensees as to when they must renew.

8.6.2. Successful bidders who are not current licensees shall be required to obtain a Wholesaler's Basic Permit by submitting Bureau of Alcohol, Tobacco and Firearms Form ATFF 5100.24 Application For Basic Permit Under The Federal Alcohol Administration Act and mailing it to ATF, 550 Main Street, Cincinnati, OH 45202-3263. If this Permit is issued, the successful bidder shall submit an ATF Form 5630.5, Special Tax Registration and Return, to qualify for a Wholesale Dealer In Liquors Tax Stamp and mailing it along with a check or money order for Five Hundred Dollars (\$500.00) made payable to "Bureau Of Alcohol, Tobacco and Firearms" to Bureau of ATF, P.O. Box 371962, Pittsburgh, PA 15250-7962. Questions about this matter can be answered by telephoning ATF, 1/800/398-2282 at its Cincinnati, OH office.

§ 175-5-9. Investigation of Applicants for Retail License; Notification to Approving or Denying Application; General Provisions Relating to Licensing.

9.1.. 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.

9.1.1. The applicant, upon submitting an application, is deemed to consent to the ABCC ABCA conducting a complete investigation of the applicant.

9.2. Upon 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.

9.3. When an application is denied, the Commissioner shall provide the applicant with the reasons for the denial, including specific findings of fact, and the applicant shall be entitled to a hearing before the Commissioner if the hearing is requested within five (5) days after the decision is issued. Any such hearing shall be held as specified in W. Va. Code §60-3A-28 and §175-5-28 of these this rule but the decision after hearing shall, notwithstanding the provisions of W. Va. Code §60-3A-28 and §175-5-28 of these this rule be final and binding and not subject to judicial review, as provided in W. Va. Code §60-3A-9, notwithstanding the provisions of W. Va. Code §60-3A-28 and §175-5-28 of this rule.

9.3.1. The Commissioner's decision shall be served on the licensee by certified mail, return receipt requested, or by personal service in accordance with Rule 4, West Virginia Rules of Civil Procedure for The Trial Courts of Record, the provisions of which are incorporated in this rule by reference.

9.3.2. The requirement that the hearing must be requested "within five (5) days after the decision is issued" shall mean within five (5) days following the date upon which actual notice is received by the licensee.

9.3.3. In computing the five (5) days following actual notice of the Commissioner's decision, the licensee does not have to include: (1) the day on which he receives the actual notice; (2) any legal holidays; (3) days on which there is a special election, primary election or a general election; and (4) if the 5th day falls on a Saturday, Sunday or a legal holiday, the prescribed 5th day is the first time the next day is not a Saturday, Sunday or a legal holiday. Reference is made to W.Va. Code §2-2-1 for a complete explanation of how to compute the five (5) days, and to W.Va. Code 2-2-2 for further elaboration on how to count the five (5) days.

9.3.4. The hearing request must be in writing and must ~~provide grounds for the hearing; include a basis for the applicant's belief that the decision of the Commissioner is in error.~~

9.3.5. Within ten (10) days after receipt of the hearing request, the Commissioner shall schedule a hearing and provide at least twenty (20) days' notice of the hearing. Such The notice shall be in writing and state the date, time and place of hearing.

9.3.6. The Commissioner ~~shall~~ must render his decision within twenty (20) days after completion of the hearing.;

9.4. An applicant shall provide all information required by W. Va. Code article §60-3A-1, *et seq.*, and this regulations rule and shall satisfy all requests for information pertaining to qualification and in the form specified by the Commissioner. By filing an application, an applicant waives liability to any damages resulting from any disclosure or publication in any manner of any material or information acquired during inquiries, investigations or hearings.

§175-5-10. Bidding Procedure.

~~10.1. The issuance of retail licenses shall be based on sealed competitive bids in accordance with the provisions of W. Va. Code § 60-3A-10 and Section 175-5-10 of these rules. The bidding procedure and timetable for the issuance of retail licenses shall be announced by public notice published as a Class II-O legal advertisement in compliance with the provisions of W. Va. Code article 59-3, and the publication area for such publication shall be each market zone within which a retail outlet shall be located. The second publication of such notice must appear on or before May 29, 1990.~~

10.1. The issuance of retail licenses shall be based on sealed competitive bids in

accordance with provisions as follows:

10.1.1. 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 W.Va. Code Section §59-3-2, and the publication area for the publication shall be each market zone within which a retail outlet shall be located.

10.1.2. The second publication of the notice shall appear more than sixty (60) days next preceding the final day for submitting bids.

10.1.3. Each bid shall indicate the market zone for which the retail license is sought and whether the bid is for a Class A retail license or a Class B retail license.

10.1.4. If the Board has created one or more designated areas for the market zone, the bid shall indicate whether it is for the Class B retail licence to be issued for any designated area.

10.1.5. No bid shall be altered or withdrawn after the appointed hour for the opening of bids.

10.1.6. Subject to the provisions of W.Va. Code §60-3A-10b, each retail license shall be awarded to the highest bidder.

10.1.7. In market zones where two or more Class B retail licenses are authorized (other than for a designated area or areas), the licenses shall be awarded to those persons submitting the highest bids.

10.1.8. No bid shall be considered unless the bond required by W. Va. Code §60-3A-11.1 is submitted with the bid. However, if the bid bond is cash or negotiable securities, the bidder shall follow the procedure set forth in §175-5-11.2. of this rule.

10.1.9. 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.

10.1.10. Bidders submitting bids on forty-five (45) or more of the authorized retail stores shall submit in the bid package a prioritized list of the stores in numerical order for which they have bid. In the event that such bidders are not successful bidders on any of their listed, prioritized stores, such stores shall be removed from the list in descending order, and may be replaced in ascending order with any retail stores listed above number forty-five (45) on their list and for which they are successful bidders. For each Class A license listed, the number of stores authorized thereunder shall be listed as separate numbers. For example, a listing of an A-3 license bid, shall be prioritized as three separate stores licenses.

~~10.2. Prior to the advertisement for bids for a retail license, the Commissioner shall~~

determine whether the current lessor for any existing State liquor store or stores within the applicable market zone or designated area will agree to accept the eventual Class B retail licensee as lessee for the remaining term of the lease. Should such lessor agree to accept the eventual Class B retail licensee, such retail licensee shall have the option to assume such lease. In market zones where there are two (2) or more Class B retail licensees, the retail licensee who or which submitted the highest responsible bid shall have the option to assume such lease and, if such retail licensee does not assume such lease, then the retail licensee who or which submitted the next highest responsible bid for a retail license in such market zone shall have the option to assume such lease.

10.2. Each person desiring to submit a bid shall file the bid with the West Virginia Secretary of Administration, Purchasing Division, 2091 Washington Street, East, P.O. Box 50130, Charleston, West Virginia 25305-0130 prior to February 24, 2000 at 1:30 o'clock p.m. The Purchasing Division will safeguard the bids and will conduct the opening of the bids on February 24, 2000 at 1:30 o'clock p.m.. It will also determine if the bids have been submitted in compliance with the bidding requirements established by the provisions of W.Va. Code §§60-3A-10 and 60-3A-10b. For this purpose, the Secretary of Administration, Purchasing Division will be acting as the agent of the Commissioner by virtue of a Memorandum of Understanding between the Commissioner and the Secretary of Administration.

10.2.1. 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 bid opening process is completed by the Purchasing Division, its Director shall, by Affidavit, certify the name of each bidder, the amount bid, and whether the bid was submitted timely and in correct form, and have the State Police Department of Public Safety deliver all of the bids and the Affidavit to the Commissioner's office or to his designee.

10.2.2. 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. It shall be open to public inspection during normal business hours of the Commissioner. These documents shall not be destroyed without the written consent of the Legislative Auditor.

10.3. 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 (1) or more designated areas for such market zone, whether the bid is for the Class B retail license to be issued for any such designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of bids. Each retail license shall be awarded to the highest responsible bidder. In market zones where two (2) or more Class B retail licenses are authorized (other than for a designated area or areas), such licenses shall be awarded to those persons submitting the highest responsible bids.

~~10.3.1 Lump sum bids for all Class A retail licenses in the State will be permitted.~~

~~10.3.2 Lump sum bids for more than one (1) but less than all Class A retail licenses in the State will not be permitted.~~

~~10.3.3 A bid submitted for all Class A licenses will be evaluated by the State Retail Liquor Licensing Board by comparing this bid to the sum of each of the highest qualified Class A license bids received for each of the individual market zones. If the lump sum bid is higher than the total of such individual highest bids, the Board will award all Class A licenses in the State to the highest qualified lump sum bidder. Conversely, if the sum of the individual bids is equal to or greater than all lump sum bids, then the Class A licenses will be awarded to the persons submitting the highest qualified bid in each of the market zones.~~

~~10.3.4 A bid for more than one (1) Class A license but less than all Class A licenses in the State must designate the Class A licenses bid upon and allocate the bid amount for each such Class A license.~~

10.3. Notification of successful bid and deadline, specified by the Commissioner, for bid payment shall be by certified mail, return receipt requested, or by personal service in accordance with Rule 4, West Virginia Rules of Civil Procedure for Trial Courts of Record, the provisions of which are incorporated into this rule by reference

10.3.1. If the successful bidder fails to pay to the Commissioner the bid price within the deadline date specified by the Commissioner, the bid bond provided for in W.Va. Code §60-3A-11 and §175-5-11 of these this rule shall be forfeited and such the bidder shall not be issued the retail license.

10.3.2. Such A bid bond shall not be forfeited but shall be released if the successful bidder fails to qualify for the Federal Wholesaler's Basic Permit or the wholesale dealer in liquors tax stamp and the retail dealer in liquors tax stamp, unless the bidder provided false information to the federal government or to the Commissioner and such false information was the basis for denial of such the basic permit in which case the bid bond will shall be forfeited.

10.3.3. In either event, the Commissioner shall then issue the retail license to the next highest bidder for such retail license or reject all bids and start anew the bidding procedure for such the retail license.

~~10.4. No bid shall be considered unless the bond required under W. Va. Code § 60-3A-11 and Section 175-5-11 of this rule is submitted to the Commissioner. All bids for a retail license may be rejected by the Board if the Board determines that the highest responsible bid is inadequate, in which event the Commissioner shall begin anew the bidding process for that retail license:~~

10.4. Prior to the issuance of the retail license to the successful bidder, the bid price and

the annual retail license fee, as specified in W. Va. Code § 60-3A-12, shall be paid to the Commissioner by money order, certified check, or cashier's check. Payment shall arrive in the Commissioner's office no later than 4:00 p.m. on Thursday, May 25, 2000.

~~10.5. For each ten (10) year license period, the Board may determine that the interest of the State is best served by receiving alternate bids in one (1) or more market zones where the Board has authorized both a Class A license and one (1) or more Class B licenses. In such case, the Commissioner shall advertise the zone both for a Class A license and one (1) or more Class B licenses, and also for only Class B licenses; in the second alternative the number of Class B licenses shall be the sum of the authorized Class A license locations and the number of Class B licenses offered for the market zone.~~

~~10.5.1 When alternate bidding is authorized by the Board for a market zone, the Commissioner shall total the apparent successful bids for the Class A license and the Class B license(s) in alternate one and shall total the apparent successful bids for Class B licenses in alternate two. If the total of the apparent successful bids is higher in alternate one, then the Commissioner shall award the Class A license and the authorized number of Class B licenses. If however, the total of the apparent successful bids in alternate two is higher than the total for alternate one, the Commissioner shall award only the Class B licenses authorized in alternate two and no Class A license shall be issued.~~

10.5. All retail licenses shall be signed by the Commissioner in the name of the State.

~~10.6 Each person desiring to submit a bid must file the same with the Commissioner and the Commissioner must have date-stamped the bid as having been received on or before 1:00 p.m. EDT on Tuesday, August 28, 1990. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour shall constitute 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. Subsequent to the awarding of all retail liquor licenses, a copy of each successful bid and the respective 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.~~

~~10.7. In the event two or more bids for the same retail license are for the same amount, the following procedure will be followed to determine the successful bidder.~~

~~10.7.1. Such bidders shall be notified to meet at the Commissioner's office at a specified date and time.~~

~~10.7.2. At the time of the meeting, the names of the affected bidders which shall have been written on paper, shall be placed in a hat or similar container.~~

~~10.7.3. The Commissioner shall then draw from the hat one of the pieces of paper and the bidder named thereon shall be declared to the successful bidder.~~

~~10.8—Prior to the issuance of the retail license to the successful bidder, the bid price, as specified in W. Va. Code § 60-3A-12 and Section 175-5-12 of this rule shall be paid to the Commissioner by money order, certified check or cashier's check or wire transfer. All retail licenses shall be signed by the Commissioner in the name of the State of West Virginia.~~

~~10.9—Notification of successful bid and deadline for bid payment shall be by certified mail, return receipt requested. If the successful bidder fails to pay to the Commissioner the bid price within twenty (20) days of the Commissioner's notification to do so, the bid bond provided for in W. Va. Code § 60-3A-11 and Section 175-5-11 of this rule shall be forfeited and such bidder shall not be issued the retail license: Provided, That such bid bond shall not be forfeited but shall be released if the successful bidder fails to qualify for the Federal Basic Permit or the wholesaler or retailer tax stamp unless the bidder provided false information to the federal government or the Commissioner. The Commissioner shall then issue the retail license to the next highest responsible bidder for such retail license or reject all bids and start anew the bidding procedure for such retail license.~~

~~10.10—If the successful bidder has paid the entire bid price and then fails to qualify for the Federal Basic Permit, the Wholesale Dealer In Liquors permit or the Retail Dealer In Liquors permit, the amount of the bid price will be refunded unless the successful bidder provided false information to the federal government or to the Commissioner and such false information was the basis for denial of such permit. In such a situation the amount paid by the successful bidder will be retained by the Commissioner and deposited in the State General Fund.~~

§175-5-10a. Preference for resident bidders.

~~10a.1. In determining the highest responsible bidder for purposes of W. Va. Code § 60-3A-10, and §175-5-10 of this rule, the Board shall afford a five percent (5%) preference for West Virginia resident bidders, ~~which~~. This preference shall be computed by multiplying the bid price submitted by each resident bidder by 1.05. adding five percent of the bid price to the bid price submitted by the resident bidder for a retail license. This preference shall be forfeited by any resident bidder who fails to submit the minimum bid amount specified by the Board for a particular retail license.~~

~~10a.1.1. This preference shall not be used to be a part added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.~~

~~10a.2. For purposes of W. Va. Code §60-3A-10a and this section, a bidder shall be deemed to be considered a West Virginia resident if the bidder:~~

~~10a.2.1. Has ~~Being an individual~~, has resided in West Virginia for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened; or: if the bidder is a corporation~~

~~10a.2.2. Being a person other than an individual, has had its headquarters or~~

principal place of business in this State for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened.

~~10a.2.1.1. — has had its headquarters or principal place of business in this State for at least the four (4) years immediately prior to such date; or~~

~~10a.2.1.2. — that each of the principal officers, Director s and shareholders who own ten percent (10%) or more of the corporate shares of the corporation have resided in West Virginia for at least four (4) years immediately prior to the date upon which the bid is opened; or~~

~~10a.2.1.3. — if the bidder is a partnership, that each partner owning a ten percent (10%) or more partnership interest in a partnership formed for the purpose of obtaining a retail liquor license have resided in West Virginia for at least four (4) years immediately prior to the date upon which the bid is opened; and~~

~~10a.2.1.4. — if separate corporations form a new corporation for purposes of obtaining a retail liquor license, each corporation has had its headquarters or principal place of business in this State for at least four (4) years immediately prior to the date upon which the bid is opened; or~~

~~10a.2.1.5. — if a parent corporation forms a subsidiary corporation for the purpose of obtaining a retail liquor license, such parent corporation has had its headquarters or principal place of business in this State for at least four (4) years immediately prior to the date upon which the bid is opened; and~~

~~10a.2.2. — meets the requirements set forth in W. Va. Code §5A-3-44 relating to a residency of vendors, except for the requirement of having paid business and occupation taxes.~~

10a.3. “Headquarters” or “principal place of business” means the place where the majority of the governing power of a bidder resides and is executed.

10a.4. In order to qualify as a resident bidder, a person other than an individual, means a bidder who in each year of the four (4) year period during the forty-eight (48) consecutive month immediately prior to the date on which the bid is opened, did as follows:

10a.4.1. Had registered in accordance with W.Va. Code §11-12-1, et seq., [“Business Registration Tax”] to transact business within the State of West Virginia;

10a.4.2. Maintained its headquarters or principal place of business in this State;

10a.4.3. Had actually paid, and not just applied to pay, county personal property taxes on the equipment used in the regular course of its business activity; and

10a.4.4 Had actually paid, and not just applied to pay, required business taxes

imposed by W.Va. Code §11-1-1, et seq.: a resident bidder shall give written consent to the Tax Commissioner authorizing disclosure to the ABCA Commissioner of appropriate information which will verify that the bidder has paid the required business taxes, but such information shall not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

10a.5. A bidder who is an individual shall be able to meet the four year continuous residency requirement by providing the Commissioner with documentary proof that he/she has resided continuously in West Virginia for four years during the 48 month period immediately preceding the filing of the bid. Copies of receipts from the Sheriff of a County indicating payment of personal property taxes and/or real estate taxes for each of the four years which indicate a West Virginia address for the bidder; copies of Department of Motor Vehicle documents such as a Driver's License, Registration Card, and Certificate of Title indicating a West Virginia address for the bidder during those four years; copies of Voter Register office documents indicating a West Virginia residence address for the bidder during those four years; certification from the Tax Commissioner that the bidder had filed Income Tax Returns for the previous four year period prior to the bid which indicated a West Virginia residence address for the bidder; are examples of documents which can be submitted to the Commissioner in proof of a bidder's residence address during the four years in question. Copies of any three documents mentioned above shall be submitted with the bid form and to the Commissioner's office by any individual bidder who desires to be granted a Preference For Resident Bidders.

10a.6. A bidder who is other than an individual and is claiming a preference for residential bidders, shall submit documents in its bid package which prove its entitlement to this preferential treatment. Such documents will have to indicate that the requirements stated in subsection 10a.4. of this section have been satisfied.

10a.7. A bidder who feels believes he meets the requirements for residency set forth in W. Va. Code §60-3A-10a and Section §175-5-10a.2 of this rule, must affirmatively assert his claim on the official application form to receive this preferential treatment.

§175-5-10b. Bidding Procedure For Licenses Issued For Each Ten Year Period Beginning July 1, 2000, and Licenses Issued For Each Ten Year Period Thereafter.

10b.1. The issuance of Class A licenses and Class B licenses for the ten 10-year period beginning July 1, 2000 the first day of July, two thousand, and for each ten 10-year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of W. Va. Code § 60-3A-10 and §175-5-10 of this rule, except as otherwise provided in this section.

10b.2. Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ten 10-year period beginning July 1, 2000, the first day of July, two thousand, the Board shall determine the minimum bid for each license based upon a review of the ABCA wholesale sales to each retail outlet permitted to operate under the license and such other factors as the Board may determine. to be the The total amount of the minimum bid amounts specified by the Board shall be not less than nineteen million dollars (\$19,000,000) to generate the revenues from liquor

~~license renewal projected by the Governor's official estimates for fiscal year two thousand as presented to the regular session of the Legislature in the year one thousand nine hundred ninety-nine.~~

~~10b.3. Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ten 10-year periods beginning July 1, 2000 the first day of July, two thousand ten and the first day of July every ten 10-years thereafter the Board shall determine the minimum amount for each bid. will make the same determinations as are specified in the preceding subsection 10b.2.~~

~~10b.4 All bids for a retail license for the ten 10-year period beginning July 1, 2000 the first day of July, two thousand, or for any ten 10-year period thereafter may should be rejected by the Board if the Board determines that the highest bid fails to meet the minimum bid requirement.~~

~~10b.5. 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.~~

~~10b.6. If the Board determines that 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, 2000 the thirtieth day of June, two thousand, or for any ten 10-year period thereafter, on the thirtieth day of June preceding the expiration of the license.~~

~~10b.7. If the current licensee holding the same retail license at the time for submission of the bid for the period ending June 30, 2000 the thirtieth day of June, two thousand, or for any ten 10-year period thereafter, on the thirtieth day of June preceding the expiration of the retail license, submitted a bid that was no not less than the minimum bid and is, after considering any preference applicable under the provisions of W. Va. Code §60-3A-10a, and §175-5-10a of this rule, an unsuccessful bidder for the license for the period beginning July 1, 2000 the first day of July, two thousand, or for any ten 10-year period thereafter, on the first day of July 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 W. Va. Code §60-3A-10b(e) and §175-5-10b.8 of this rule, and upon compliance with all other requirements imposed by the provisions of W. Va. Code §60-3A-1, *et seq.*, for the issuance of the license, the retail license for the ten 10-year period beginning July 1, 2000 the first day of July, two thousand, or for any ten 10-year period thereafter, shall be issued to the current licensee.~~

~~10b.7.1. Within five (5) days following the receipt of actual notice from the Commissioner to a current licensee that an opportunity exists for him/it to receive a license, the current licensee shall enter into a binding, written agreement with the Commissioner that he/it accepts the opportunity to receive a license and will pay the Commissioner an agreed upon amount of money for the opportunity. If the 5th day falls on a Saturday or Sunday, the agreement may be made on the following Monday. Payment by the current licensee to the Commissioner shall be made to the Commissioner by money order, certified check or cashier's check which shall be received in the Commissioner's office no later than 4:00 o'clock p.m. on~~

May 25, 2000.

10b.7.2. If within the time determined by the Commissioner, the current licensee pays the amount to the Commissioner and complies with all other requirements imposed by the provisions of W. Va. Code §60-3A-1, et seq., for the issuance of the license, the retail license for the ten 10-year period beginning July 1, 2000 the first day of July, two thousand, or for any ten 10-year period thereafter, shall be issued to the current licensee. If payment is not made to the Commissioner within the allotted time, the current licensee will shall forfeit his bid bond, and the Board may authorize the Commissioner to award the license to the original successful bidder upon receipt of payment of the bid amount and compliance by that bidder with all additional requirements imposed by W. Va. Code §60-3A-1, et seq., and this rule.

10b.8. In determining the amount a current licensee, who is an unsuccessful bidder, shall pay as described in the preceding section of this rule, the Board shall afford the unsuccessful bidder a preference.

10b.8.1. If the unsuccessful bidder is a West Virginia resident as defined in W. Va. Code §60-3A-10a and §175-5-10a of this rule, the Board shall afford the unsuccessful bidder a five percent (5%) preference in addition to the five percent (5%) residential preference afforded under the code provisions and the regulation rule cited herein.

10b.8.2. If the unsuccessful bidder is not a West Virginia resident, the Board shall afford the unsuccessful bidder a five percent (5%) preference.

10b.8.3. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price. However, under no circumstances may the preference bring the price of the bid below the minimum bid established by the Board.

10b.9. This preference will shall be forfeited by a current licensee who fails to make a minimum bid on his/its retail store during the initial round of bidding.

10b.10 A current licensee who is not operating any of the retail outlets for which he/she/it is authorized under the license is not eligible for the preference provided for in this section.

10b.11. In the event all bids submitted for a 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 license.

§175-5-10c. Criminal Penalties For Unlawful Inducement.

10c.1. 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 (\$10,000), and in addition, shall be subject to a civil penalty payable to the Commissioner of not more than one million dollars (\$1,000,000).

10c.2. 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 (\$10,000), and, in addition, shall be subject to a civil penalty payable to the Commissioner of not more than one million dollars (\$1,000,000).

§175-5-11. Bonding Requirements.

11.1. Each applicant submitting a bid or bids under W. Va. Code § 60-3A-10 and §175-5-10 of this rule, shall furnish to the Commissioner a bond at the time of bidding, which bond shall guarantee the payment of twenty-five percent (25%) of the total price bid for each retail license. In the event that a winning bid is not paid, the bid bond will be forfeited to the State.

11.1.1. The bid bond shall be enclosed within the sealed bid of the applicant so as not to reveal the amount of the applicant's bid prior to bid opening day. However, if the bid bond is in the form of cash or negotiable securities:

11.1.1.a. It shall be transmitted directly either in person or by certified mail, return receipt requested to the State Treasurer's office, and

11.1.1.b. A certified statement made by the Treasurer to the effect that the bid bond, in the amount required, was in the form of cash or negotiable securities and was transmitted directly to the State Treasurer's office for safekeeping ~~and a copy of this certified statement~~ shall be enclosed with the sealed bid.

11.2. The bond required by W. Va. Code § 60-3A-11 and §175-5-11 of this rule 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. A cashier's check or surety bond is the preferred means of posting the bid bond. 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.

11.2.1. When cash or negotiable securities are deposited with the Treasurer to comply with the bid bond requirement, the Treasurer shall not reveal the amount of the deposit to the Commissioner or any other official or person until the bid opening day.

11.2.2. At the time when bids are opened, a representative of the Treasurer of West Virginia ~~will~~ shall be present to confirm the amount of deposit made in behalf of license bids.

11.3. The bond shall be returned to the 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 and payment of the required amount.

§175-5-12. Annual Retail License Fee; Expiration and Renewal of Retail Licenses.

12.1. The annual retail license period shall be is from the first day of July first to the thirtieth day of June thirtieth of the following year.

12.1.1. The annual retail license for a Class A retail license shall be is the sum obtained by multiplying the number of retail outlets operated by the retail licensee in the market zone to which the Class A retail license applies by ~~one thousand five hundred dollars (\$1,500.00)~~ one thousand dollars (\$1,000).

12.1.2. The annual retail license fee for a Class B retail license shall be ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000).

12.1.3. 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 thirtieth day of June.

~~12.1.4. The holder of a Class A retail license is not required to operate the maximum number of locations permitted for the license. A license fee is due only for a location which is selling liquor during any portion of the license year.~~

~~12.1.5. Once an annual license for a location is established, the license fee shall not again be pro-rated for any subsequent year.~~

12.2. All retail licenses shall expire on June thirtieth of each year and may be renewed only upon the submission to the Commissioner of the same information required to originally apply for the license and such additional information 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 the provisions of W. Va. Code §60-3A-12(a) and §§175-5-12.1.1 and 175-5-12.1.2 of this rule.

12.3. 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.

12.4. All retail licenses issued or renewed under the provisions of W. Va. Code §60-3A-12 and this rule shall expire and be of no further force or effect as of the July first, in the year 2000; prior to which time new retail licenses shall be issued by following the bidding and other procedures set forth in W. Va. Code §60-3A and this rule for the initial issuance of retail licenses: ~~for the period ending June 30, 2000 the thirtieth day of June, two thousand, or on the thirtieth day of June for any ten 10-year period thereafter shall expire and are be of no further force or effect as of July 1, 2000 the first day of July, in the year two thousand or as of the first day of July every ten 10-years thereafter.~~

12.5. Notwithstanding any provision of W. Va. Code §60-4-18 to the contrary, a

municipality may invoke the authority granted by the provisions of W. Va. Code §8-13-4 to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in W. Va. Code § 60-3A-12(a) and §175-5-12.1 of this rule. The provisions of W.Va. Code §§60-4-18 and 8-13-4 are incorporated into this regulation rule by reference.

§175-5-13. Commissioner's Report To The Legislature. - Reserved For Future Use.

§175-3A-14. Sale, Assignment or Transfer of Retail License.

14.1. 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 by W. Va. Code §60-3A-8 and §175-5-8 of this rule.

14.1.1. In no case may the holder of a Class A license sell one (1) or more authorized locations or in any way seek to divide a Class A license.

14.2. No person may sell, assign or otherwise transfer a retail license without the prior written approval of the Commissioner, which approval shall not be unreasonably withheld. For purposes of W.Va. Code §60-3A-14 and this §175-5-14, the merger of a retail licensee or the sale of more than fifty percent (50%) of the outstanding stock of a licensee which is a corporation, or of the partnership or ownership interests of a partnership or other entity that is not a corporation, shall be deemed to be a sale, assignment or transfer of a retail license under said Section 60-3A-14 and this Section 175-5-14. W. Va. Code §60-3A-14 and this section of this rule.

§175-5-15. Surrender of Retail License.

15.1. 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 in W.Va. Code §60-3A-1, *et seq.*, and this rule for the initial issuance of a retail license. There will be no pro-rate return of the initial bid or of any annual license fee which has been paid the Commissioner. However, the retail license shall be issued only for the remaining period and shall expire on July 1, 2010.

175-5-16. Restriction on location of retail outlets.

~~16.1 No retail outlet may be located within the immediate vicinity of a school or church: Provided, That the provisions of W. Va. Code §60-3A-16 and this Section 175-5-16 shall not apply to the location of a retail licensee who, on the date of the passage of the State Retail Liquor License Act (W. Va. Code §60-3A), holds a license for the retail sale of wine, fortified wine or nonintoxicating beer at such location:~~

16.1 No retail outlet may be located within the immediate vicinity of a school or church.

~~16.2. The provisions of these restrictions~~ This prohibition or restriction shall not apply to the location of a retail licensee who, on the date February 27, 1990 of the passage of the Acts of the Legislature of West Virginia, 1990, Chapter 9, held a license for the retail sale of wine, fortified wine or nonintoxicating beer at such a location.

§175-5-17. Wholesale Prices Set By Commissioner; Retail Licensees to Purchase Liquor From the State; Transportation and Storage; Method of Payment.

17.1. The Commissioner shall fix wholesale prices for the sale of alcoholic liquor, other than wine, to retail licensees. The Commissioner shall sell alcoholic liquor, other than wine, to retail licensees according to a uniform pricing schedule. ~~Provided, That the Commissioner may also establish discount prices for the sale to retail licensees of alcoholic liquor in inventory at State liquor stores and agency stores, but such discount prices shall only be available to retail licensees who pick-up such alcoholic liquor at such stores.~~ The Commissioner shall obtain if possible, upon request, any alcoholic liquor requested by a retail licensee.

~~17.1.1. Any alcoholic liquor picked up by a retail licensee from a State liquor store or agency prior to November 30, 1990 shall be discounted twenty percent (20%) from its wholesale catalog price as that price is defined in Administrative Rule 175-1-4.2.~~

~~17.2. On or before July 1, 1990, the Commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the Commissioner for all alcoholic liquor in order to determine the prices at which all alcoholic liquor will be sold to retail licensees during the succeeding three (3) years~~

17.2. Wholesale prices shall be established in order to yield a net profit for the general fund of not less than six million five hundred thousand dollars (\$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 W. Va. Code §60-3-17.

~~17.2.1. Until July 1, 1993, the wholesale liquor mark-up used to calculate the uniform cost for alcoholic liquor charged to every retail licensee by the Commissioner will be twenty-five percent (25%). During the three (3) year period ending July 1, 1993, price changes will only occur because of changes in the distillers' delivered price to the ABCC and the Federal Excise Tax. The sum of these two variables times 1.25 shall be the wholesale cost charged by the Commissioner to every retail liquor licensee. A shipping and handling charge of one dollar and five cents (\$1.05) per case delivered shall also be charged.~~

~~17.3. A retail licensee shall purchase all alcoholic liquor (other than wine) for resale in this State only from the Commissioner, and the provisions of W. Va. Code §§60-6-12 and 60-6-13 shall not apply to the transportation of such liquor: Provided, That a retail licensee shall purchase wine from a distributor thereof who is duly licensed under W. Va. Code §60-8. All alcoholic 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. Fortified wines and cordials must be~~

purchased only from the Commissioner:

17.3. 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.

17.3.1. A retail licensee shall purchase all liquor, other than wine, for resale in this State only from the Commissioner, and the provisions of W. Va. Code §§60-6-12 and 60-6-13, the provisions of which are incorporated herein by reference, shall not apply to the transportation of the liquor.

17.3.2. A retail licensee shall purchase wine from a wine distributor who is duly licensed under West Virginia W. Va. Code §60-8-17.

17.3.3. 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 unless the Commissioner, in his or her discretion, authorizes upon written request a retail licensee to store liquor at a site other than the retail outlet or outlets.

17.4. The sale of liquor by the Commissioner to retail licensees shall be paid by electronic fund transfer ("EFT"), which shall be initiated by the Commissioner on the business day following the retail licensee's order, or by money order, certified check or cashier's check which shall be received by the Commissioner at least twenty-four (24) hours prior to the shipping of the alcoholic liquors.

17.4.1. In the event 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, the Commissioner may then accept the retail licensee's checks in an amount up to the amount of the letter of credit, or surety bond issued by an insurance company licensed in the State.

17.4.2. Any EFT which is not completed due to nonsufficient funds will preclude further processing of liquor orders to the licensee by ABCA until payment is finally received. In any calendar year where the Commissioner receives two (2) nonsufficient fund responses to a properly executed EFT from a licensee's bank account, further liquor orders of the licensee will be shipped after the Commissioner's receipt of a certified check, cashier's check or money order for the full amount of the order at least twenty-four (24) hours prior to delivery, and the Commissioner shall be authorized to take action against any retail licensee who violates this subsection pursuant to the provisions of W. Va. Code §60-3A-26 relating to civil penalties.

17.5. A retail licensee may not sell liquor to persons licensed as private clubs under the provisions of W. Va. Code §60-7-1, et seq., or to the general public at less than one hundred ten percent of the retail licensee's costs as defined in W. Va. Code §47-11A-6, the provisions of which are incorporated in this regulation rule by reference.

§175-5-18. Days and Hours Retail Licensees May Sell Liquor.

~~—Retail licensees may not sell liquor on Sundays, Christmas or any primary or general Statewide election day, or between the hours of 10:00 p.m. and 8:00 a.m. on weekdays and Saturdays, wine and fortified wines may not be sold between 2:00 a.m. and 1:00 p.m. on Sundays or between 2:00 a.m. and 7:00 a.m. on weekdays or Saturdays.~~

18.1. Retail licensees may not sell liquor on Sundays, Christmas or election day, or between the hours of ten o'clock p.m. and eight o'clock a.m. on weekdays and Saturdays. Wine and fortified wines may be sold on such days and at such times as authorized in W. Va. Code §60-8-34, the provisions of which are incorporated into this regulation rule by reference.

18.2. For purpose of this section, "election day" shall mean only statewide primary election or general election days, and shall not mean any other State or local election day.

§175-5-19. Limitation on Amount to be Sold.

Not more than ten gallons of alcoholic liquor may be sold by a retail licensee to a person at one time without the approval of the Commissioner. ~~However,~~ but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes. This section does not apply to purchases by private clubs as defined in W. Va. Code §60-7-1, *et seq.*

§175-5-20. Nonapplication of Rules to Retail Sales of Nonintoxicating Beer.

20.1 This rule does not apply to retail sales of nonintoxicating beer. ~~and a~~ 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 W. Va. Code §11-16-1, *et seq.*, the provisions of which are incorporated into this regulation rule by reference. Beer which has an alcoholic content in excess of the limits set for nonintoxicating beer by W. Va. Code §11-16-3 may be sold by a retail liquor licensee when such beer has been purchased from the ~~ABCC~~ ABCA.

175-5-21. Tax on Purchases of Alcoholic Liquor.

21.1. 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 levied by W. Va. Code §60-3A-21 a tax upon all purchases of alcoholic liquor from retail licensees. The tax so levied is five percent (5%) of the purchase price and must be added to all purchases from retail licenses. ~~and~~ The tax must be collected with the purchase price by the retail licensee.

21.2. All such taxes shall be remitted to the Tax Commissioner who shall then deposit such taxes with the State Treasurer. All such taxes shall be distributed quarterly by the State Treasurer upon warrants of the Auditor payable to the counties and municipalities.

21.2.1. All such tax collected outside of a municipality but within one (1) mile

of the corporate limits of any municipality shall be remitted to such municipality.

21.2.2. All other tax so collected shall be remitted to the county wherein collected:

21.2.2.a. Where the corporate limits of more than one (1) municipality are within one (1) mile of the place of collection of such tax, all such tax collected shall be divided equally among each of such municipalities.

21.2.2.b. 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.

§175-5-22. Requirement for Posting Information Sign.

22.1. 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 W. Va. Code §60-6-24, the provisions of which are incorporated in this regulation rule by reference.

22.2. All persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail either for consumption off-premises or on-premises, or both, shall display signs provided by the Commissioner alcohol beverage control administrator warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy.

22.2.1. Upon a determination by the Commissioner that a licensee has failed to comply with these provisions, the Commissioner may impose a civil administrative penalty for not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

§175-5-23. Records Required of Retail Licensees; Inspection of Records.

23.1. Every retail licensee must keep a record in book form showing the date that all distilled spirits, wine and beer were received on his premises, and from whom received.

23.2. Every retail licensee shall also maintain ABCA Form 190 showing the merchandise code, the total quantity of sales, and the quantity of each sale to a religious organization or to a private club as defined in W. Va. Code §60-7-2.

23.2.1. In the case of sales to a private club, ABCA Form 190 shall be maintained by the retail licensee and the club must be identified by name, address and ~~ABCC~~ ABCA license number, and the full name of the person receiving the order must be clearly listed.

23.3. Records required to be maintained by this section shall not be destroyed, erased or altered for at least four (4) complete calendar years or until the year the retail licensee is audited and accepted by the department of tax and revenue.

§175-5-24. Unlawful Acts by Persons.

24.1. Any person under the age of twenty-one (21) years who, for the purpose of purchasing alcoholic 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 alcoholic liquor from a retail licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars (\$50.00) or imprisoned in the county regional jail for a period not to exceed seventy-two (72) hours, or both fined and imprisoned, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one (1) year.

24.2. Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one (21) to whom he or she is not related by blood or marriage any alcoholic liquor from whatever source, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars (\$100.00) or imprisoned in the county regional jail for a period not to exceed ten (10) days, or both fined and imprisoned.

24.3. No person while on the premises of a retail outlet may consume alcoholic liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of W.Va. Code §60-3A-24(c) and this § 175-5-24.3 is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars (\$100.00) or imprisoned in the county regional jail for a period not to exceed ten (10) days, or both fined and imprisoned.

24.4. Any person 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 in an amount not to exceed five hundred dollars or shall be incarcerated in the regional jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

24.5. Nothing in W.Va. Code §60-3A-24(a) 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.

24.6. 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 Commissioner 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 rules of the Commissioner.

§175-5-25. Certain Acts of Retail Licensees Prohibited; Criminal Penalties.

25.1. It is unlawful for any retail licensee, or agent or employee thereof, on such retail licensee's premises to:

25.1.1. Sell or offer for sale any alcoholic liquor other than from the original package or container;

25.1.2. Sell, give away, or permit the sale of, gift of, or the procurement of, any alcoholic liquor, for or to any person under the age of twenty-one (21);

25.1.3. Sell, give away, or permit the sale of, gift of, or the procurement of, any alcoholic liquor, for or to any person who is visibly intoxicated;

25.1.4. Sell or offer for sale any alcoholic liquor on any Sunday or other than during the hours permitted for the sale of alcoholic liquor by retail licensees as provided under W. Va. Code §60-3A and this rule;

25.1.5. Permit the consumption by any person of any alcoholic liquor;

25.1.6. With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

25.1.7. Permit any person under eighteen (18) years of age to sell, furnish or give alcoholic liquor to any other person, except as provided in subsection 25.3.2;

25.1.8. Purchase or otherwise obtain alcoholic liquor in any manner or from any source other than the Commissioner; that specifically authorized in W. Va. Code §60-3A-1, et seq., and this rule; or

25.1.9. Permit any person to break the seal on any package or bottle of alcoholic liquor.

25.2. Any person who violates any provision of W. Va. Code §60-3A-1, *et seq.*, and this rule, except W. Va. Code §60-3A-24 and §175-5-24 of this rule, including, but not limited to, any provision of W. Va. Code §60-3A-25 and this § 175-5-25, or any other 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 W. Va. Code §60-3A-1, *et seq.*, and this rule to be unlawful, is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred dollars (\$100.00) or nor more than five thousand dollars (\$5,000.00), or imprisoned in the county regional jail for not less than thirty (30) days nor more than one (1) year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under W. Va. Code §60-3A-1, *et seq.*, and this rule.

25.3. Nothing in W.Va. Code §60-3A-1, *et seq.*, or this rule, or any other rule of the Board or Commissioner, prevents or prohibits any retail licensee from employing any person who is at least eighteen (18) 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 liquor under the provisions of W. Va. Code §60-3A-1, *et seq.*, and this rule.

25.3.1. With the prior written approval of the Commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than eighteen (18) years of age but at least sixteen (16) years of age, but such persons' duties shall not include the sale of liquor: Provided, That the authorization to employ such persons under the age of eighteen (18) years shall be clearly indicated on the retail license issued to any such retail licensee.

25.3.2. Permission to employ persons who are sixteen (16) or seventeen (17) years of age must be sought on the application for license or on any annual license renewal form only and such approval will not be unreasonably withheld.

25.3.3. The age restrictions in §175-5-25.3 of this rule apply to minor children of the licensee.

§175-5-26. Civil Penalties.

26.1. Any retail licensee who violates any provision of W. Va. Code §60-3A-1, *et seq.*, or this rule or any other 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 (\$1,000.00) for each such violation.

26.2. Each violation shall constitute a separate offense.

26.3. 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.

26.2. A civil penalty shall be assessed by the Commissioner only after the Commissioner shall have given at least ten (10) 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.

26.3. The provisions W. Va. Code §60-3A-28(b), (c), (d) and (e) and §175-5-28.2, 28.3, 28.4 and 28.5 of this rule are applicable to any such hearing and with respect to judicial review

thereafter.

§ 175-5-27. Suspension or Revocation of Retail License.

27.1 The Commissioner may, upon his or her motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of W. Va. Code §60-3A-1, *et seq.*, this rule or of any other rule promulgated by the Board or Commissioner under authority of W. Va. Code §60-3A-6 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 (20) 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 wilfully violated any such provision.

27.2 The Commissioner may revoke a retail license for any reason which would constitute grounds for the denial of an application for retail license filed pursuant to W. Va. Code §60-3A-8.

§ 175-5-27a. Revocation of License or Reduction of Authority to Operate Retail Outlet For Failure to Operate Retail Outlet.

27a.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.

27a.1.1. 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.

27a.1.2. Notwithstanding any provision of W. Va. Code § 60-3A-7 to the contrary, the Board may authorize the Commissioner to issue, subject to the bid requirements of W. Va. Code § 60-3A-10, a Class B license in the stead of each retail outlet for which authority to operate under a Class A license has been reduced pursuant to W. Va. Code § 60-3A-27a(1).

27a.2. The Commissioner may not accept the bid of a person who has had a license revoked, pursuant to W. Va. Code § 60-3A-27a(a)(1) and §175-5-27a.1 of this rule when the license is offered for bid following the revocation.

27a.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 W. Va. Code § 60-3A-27a(1) for any Class B license issued in the stead of a retail outlet previously authorized under the reduced

license.

27a.4. The Commissioner shall follow the rules of the Board prescribing the criteria for determining whether, or not, a retail licensee has failed to operate a retail outlet.

27a.5. A revocation or reduction in number of outlets is subject to the provisions for notice, hearing and review as contained in W. Va. Code § 60-3A-28 and § 175-5-28 of this rule.

§175-5-28. Notice of and Hearing on Revocation.

28.1. Before a retail license issued under the authority of W. Va. Code §60-3A-1, *et seq.*, may be suspended for a period of more than twenty (20) days, or revoked, the Commissioner shall give at least ten (10) days notice to the retail licensee of his or her intention to suspend the retail license for more than twenty (20) days or to revoke said license.

28.1.1. Each notice shall be in writing and shall State the reason for the suspension or revocation. ~~and shall.~~ Each notice shall also 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.

28.1.2. Notice shall be sent by certified mail to the address for which the retail license was issued.

28.1.3. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and may be represented by counsel.

28.2. Such hearing and the administrative procedures prior to, during and following the same, shall be governed by and in accordance with the provisions of W. Va. Code §29A-5-1, *et seq.*, in like manner as if the provisions of said code sections were fully set forth in this section.

28.3. Any person adversely affected by an order entered following such hearing shall have the right of judicial review thereof in accordance with the provisions of W. Va. Code §29A-5-4 with like effect as if the provisions of said§29A-5-4 were fully set forth in this section.

28.4 The judgment of a circuit court reviewing such order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

28.5. Legal counsel and services for the Commissioner in all such 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.

28.6. Upon final revocation, the Commissioner shall proceed to reissue the retail license by following the procedures set forth in W. Va. Code §60-3A-1, *et seq.*, and this rule for the initial issuance of a retail license.

§175-5-28a. Notice of and Hearing on Boundary Disputes.

28a.1. Any retail licensee who disputes the placement of any part of the boundary which forms a part of the boundary of the market zone, or designated area within the market zone, within which the retail licensee's retail outlet is located may petition the Commissioner for a resolution of the dispute.

28a.1.1 The petition shall be in writing, and shall State the boundary in dispute, the grounds of the petition and all persons who may be affected by the Commissioner's decision.

28a.1.2. A copy of the petition shall be concurrently served upon all persons who may be affected by the Commissioner's decision and the petitioner shall verify under oath that such service has occurred.

28a.1.3. Within ten (10) days after receipt of the petition, the Commissioner shall schedule a hearing on the matter. At least twenty (20) days' notice of the hearing shall be provided to affected persons, such notice to be sent by certified mail, return receipt requested to the addresses provided by the petitioner.

28a.2. Such hearing and the administrative procedures prior to, during and following the same, shall be governed by and in accordance with the provisions of W. Va. Code §29A-5-1, *et seq.*, in like manner as if those provisions were fully set forth in this section.

28a.3. Any person adversely affected by an order entered following such hearing shall have the right of judicial review thereof in accordance with the provisions of W. Va. Code §29A-5-4 with like effect as if those provisions of said § 29A-5-4 were fully set forth in this section.

28a.4. The judgment of a circuit court reviewing such order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

28a.5. Legal counsel and services for the Commissioner in all such 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.

28a.5.1. Each party shall be responsible for his own legal representation.

§ 175-5-29. Disposition of Inventory Upon Revocation or Surrender of Retail License.

29.1 In the event of the revocation, or surrender of any retail license in accordance with the

~~provisions of W. Va. Code §60-3A and this rule the Commissioner shall purchase, and the retail licensee holding such retail license shall sell to the Commissioner, all of the alcoholic liquor inventory of such retail licensee based on the then current delivered cost to the retailer of such inventory less any expenses incurred by the Commissioner in connection with the repossession thereof. The Commissioner, before paying such net amount to such retail licensee, shall honor all liens and warrants issued by the Tax Commissioner pursuant to W. Va. Code §11-10 and shall then pay any remaining proceeds to the licensee. expiration or surrender of any retail license in accordance with provisions of W. Va. Code § 60-3A-1, et seq., the Commissioner may dispose of the inventory of the retail licensee, or in his discretion, may authorize another person to purchase all or any 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 the terms determined by, the Commissioner.~~

§ 175-5-30. Employees of ABCC ABCA - Reserved for Future Use.

[Former W. Va. Code §60-3A-30 enacted by Acts 1990, chapter 9, and amended by Acts, 1991, chapter 16, pertaining to employees of the alcoholic beverage control administration, was repealed by Acts, 1999, chapter 5.]

§ 175-5-31. Rules of Construction; Severability.

31.1. Nothing contained in W. Va. Code § 60-3A-1, *et seq.*, and this rule shall be construed to modify the provisions of W. Va. Code §60-5-1, *et seq.*, relating to local option elections, except that the reference to sales of alcoholic liquor by the Commissioner shall be deemed to refer to sales of alcoholic liquor by retail licensees.

31.2. If any section, subsection, subdivision, provision, clause or phrase of W. Va. Code §60-3A-1, *et seq.*, and this rule or the application thereof, to any person or circumstance is held unconstitutional or invalid, such subdivisions, provisions, clauses or phrases or applications of this rule, and to this end each and every section, subsection, subdivision, provision, clause and phrase of §60-3A-1, *et seq.*, and this rule are declared to be severable.

31.3. The provisions of W. Va. Code §60-3A-31(b) and §175-5-31.2 of this rule shall be fully applicable to all future amendments or additions to this W. Va. Code §60-3A-1, *et seq.*, and this rule, with like effect as if the provisions of said sections were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

31.4. In the event of any conflict between any provision of W. Va. Code §60-3A-1, *et seq.*, and any other provision of the 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 said W. Va. Code §60-3A-1, *et seq.*

MEMORANDUM

TO: SECRETARY OF STATE,
ADMINISTRATIVE LAW DIVISION
FROM: GENE HAL WILLIAMS *GW*

ON NOVEMBER 23, 1999, A PROPOSED RULE WAS FILED IN YOUR OFFICE AS AN EMERGENCY REGULATION RELATING TO "LICENSING OF RETAIL LIQUOR STORES".

IN SECTION 10.2 OF THAT PROPOSED RULE, MENTION WAS MADE THAT A BID OPENING WOULD BE HELD ON FEBRUARY 24, 2000 AT 1:30 O'CLOCK P.M. IN THE OFFICE OF THE DIVISION OF PURCHASES BUILDING, 2091 WASHINGTON STREET, CHARLESTON, WEST VIRGINIA 25305-0130.

SUBSEQUENTLY, THE STATE RETAIL LIQUOR LICENSING BOARD CHANGED THE TIME OF THE BID OPENING TO MARCH 3, 2000 AT 1:30 O'CLOCK P.M. IN THE DIVISION OF PURCHASES BUILDING, 2019 WASHINGTON STREET, EAST, CHARLESTON, WV 25305-0130.

AS A RESULT OF INADVERTENCE, THE CHANGES WERE NOT CORRECTED IN SECTION 10.2 ON FILE IN THE PROPOSED RULE ON FILE IN THE OFFICE OF THE SECRETARY OF STATE.

ACCORDINGLY, IT IS REQUESTED THAT THIS INFORMATION BE PRINTED IN THE STATE REGISTRATION IN ORDER TO ALERT INTERESTED PARTIES THAT THE BID OPENING WILL BE CONDUCTED IN THE DIVISION OF PURCHASES BUILDING, 2019 WASHINGTON STREET, EAST, CHARLESTON, WV 25305-0130 AT 1:30 O'CLOCK P.M. ON MARCH 3, 2000.

FILED
FEB 17 12 21 PM '00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE