

Alcohol Beverage Control Commissioner

Title 175, Series 5

FACTS AND CIRCUMSTANCES

A Legislative Rule is necessary to comply with the mandates in Enrolled Committee Substitute for House Bill No. 3023 which was enacted on March 13, 1999 effective from passage and which made significant changes in existing law located in W. Va. Code §60-3A-1, et seq.

Alcohol Beverage Control Administration

Title 175, Series 5

SUMMARY OF PROPOSED RULE

This Rule will make it possible for the ABCC 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.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 9, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.)
Alcohol Beverage Control Commissioner
Department of Tax & Revenue, 322 70th Street, S.E.
Charleston, WV 25304
Telephone: (304) 558-2481

LEGISLATIVE RULE TITLE: Title 175 - Series 5. Licensing of Retail Liquor Stores

1. Authorizing statute(s) citation W. Va. Code §§60-3A-6(c)(2) and 29A-3-1, et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
November 23, 1999.

b. What other notice, including advertising, did you give of the hearing?
Class II Legal Advertisement in the Charleston Gazette and the Charleston Daily Mail. Announcements during public meetings of the state retail liquor licensing board. Press releases. Reporters interviews with ABC Commissioner Donald L. Stemple. ABCC web site: www.state.wv.us/abcc

c. Date of Public Hearing(s) *or* Public Comment Period ended:
December 24, 1999.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached 0 No comments received 0

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

February 22, 2000.

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Gene Hal Williams, West Virginia Alcohol Beverage Control Commissioner, 322
70th Street, S.E., Charleston, WV 25304. Telephone 304/558-2481 Extension
206; Fax: 304/558-0081.

E-mail: gwilliams@abcc.state.wv.us.

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)
-
-
-
-

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 175 - Series 5 - Licensing of Retail Liquor Stores

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Alcohol Beverage Control Commissioner

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:
See attached Page 3.

Rule Title: Title 175 - Series 5 - Licensing of Retail Liquor Stores

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: August 9, 2000

Signature of Agency Head or Authorized Representative:

Donald L. Stemple

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Title 175 - Series 5 - Licensing of Retail Liquor Stores

Agency: Alcohol Beverage Control Commissioner

Attached Page 3:

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.

**WEST VIRGINIA LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSIONER
TITLE 175, SERIES 5**

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**WEST VIRGINIA LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSIONER
TITLE 175, SERIES 5**

LICENSING OF RETAIL STORES

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**WEST VIRGINIA LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSIONER
TITLE 175 - SERIES 5**

LICENSING OF RETAIL LIQUOR STORES

§ 175.5.1. General.

1.1. **Scope.** This legislative rule explains and clarifies certain powers and duties of the West Virginia Alcohol Beverage Control Commissioner as are set forth in W.Va. Code §60-3A-1, *et seq.*, which relate to the sale of new 10-year franchises to operate retail liquor stores to take effect on July 1, 2000. Specific emphasis is given to the Commissioner's duties relative to the development of recommendations to be made to the West Virginia Retail Liquor Licensing Board relating to the establishment of minimum bids for the new licenses; the number and types of Class A and Class B licenses to be authorized in each market zone; the development of bidding procedures; the award of residential preferences and the award of an additional preference for current licensees; and the methodology for selecting the successful bidders.

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

1.3. **Filing Date.** -

1.4. **Effective Date.** -

1.5. **Type of rule.** - This rule is a legislative rule within the meaning of W. Va. Code §29A-1-2(d).

1.6 **Citation.** - This rule may be cited as 175 CSR 5.

§175.5.1. Short Title.

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

§175.5.2 Definitions. As used in ~~these~~ this 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.

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

2.2. "Alcohol Beverage Control Commissioner," or "ABCC", or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner or his or her delegate.

2.3. "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.

2.4. "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.

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

2.6. "Board" means the retail liquor licensing Board created by ~~article~~ W. Va. Code, §60-3A-5.

2.7. "Class A retail license" means a retail license permitting the retail sale of liquor at more than one retail outlet.

2.8. "Class B retail license" means a retail license permitting the sale of liquor at only one retail outlet.

2.9. "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.

2.10. "Designated areas" mean one or more geographic areas within a market zone designated by the Board.

2.11. "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.

2.12. "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 applicant or retail licensee who performs a policy making function.

2.13. "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%) of alcohol by volume.

2.14. "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.

2.15. "Liquor" means alcoholic liquor that includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer and also includes wine which means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer; and shall include fortified wine which shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.

2.16. "Lineal descendant" means that kind of consanguinity which subsists between persons of whom one is descended in a direct line from the other; as between a particular person and his father, grandfather, great-grandfather and so upward, in the direct ascending line; or between the same person and his son, grandson, great-grandson, and so downwards in the direct descending line.

2.17. "Market zone" means a geographical area designated as such by the Board for the purpose of issuing retail licenses.

2.18. "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%) of alcohol by volume, whichever is greater.

2.19. "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.

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

2.21. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including but not limited to establishments that provide lodging and/or sell food for consumption on or off the premises, 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 §60-1-1, *et seq.* to sell alcoholic liquors for consumption on the premises.

2.22. “Retail license” means a license issued under the provisions of W.Va. Code §60-3A-1, *et seq.*, and this rule, permitting the sale of liquor at retail.

2.23. “Retail licensee” means the holder of a retail license.

2.24. “Retail outlet” means a specific location where liquor may be lawfully sold by a retail licensee.

2.25. “Secretary” means the Secretary of the West Virginia Department of Tax and Revenue.

2.26. “State” means the State of West Virginia .

2.27. “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.

§175.5.3. Criteria, Limitation and Necessity for Retail Operations.

3.1. State stores. – In general, the Commissioner may not operate state retail liquor stores. However, when circumstances prescribed by law exist, the Commissioner may open and operate a state liquor store in a market zone provided the Board gives its prior consent.

3.2. Application of Commissioner. -- When the Commissioner desires to operate a state liquor store in a market zone, the Commissioner shall apply to the Board for consent to operate a state liquor store in that market zone. Application shall be made by filing a petition with the chairman of the Board and forthwith mailing or otherwise delivering copies of the petition to the other members of the Board. This petition shall:

3.2.1. Identify the market zone in which the state store will be located, the Commissioner’s reason(s) for opening a state store in that market zone and the facts upon which the Commissioner relies, the estimated cost of opening the state store, and the estimated period of time needed to open the store;

3.2.2. Include a map of the market zone and the immediately adjacent market zones that shows state roads, the location of the proposed state liquor store and the locations of retail liquor stores in the adjacent market zones; and

3.2.3. Any other information the Commissioner desires to submit.

Upon receipt of the petition, the Chairman of the Board, who is also the Secretary of the WV Department of Tax and Revenue, shall set a day, time and place for the Board to meet to consider the petition.

3.3. Evidence that licensee is unable or unwilling to open a retail outlet in a market zone.

3.3.a. Failure of a licensee to open a retail outlet in a market zone and operate it in a commercially reasonable manner within one hundred twenty (120) days after June 30, 2000 or the date the retail license is issued to the licensee, whichever occurs last, shall be prima facie evidence that the licensee is unable or unwilling to open a retail outlet in that market zone. In any proceeding before the Board on this issue, the burden of proof shall be on the licensee to show by clear and convincing evidence that the licensee is not unwilling and not unable to open a retail outlet in the market zone.

3.3.b. For purpose of this section, the term "commercially reasonable manner" means that the retail outlet has regularly scheduled business hours on all days of the week [or at least 4 days of the week] during which liquor in sealed containers may be sold to consumers under state law and that those hours reasonably meet expectations of consumers in the market zone desiring to purchase liquor in seal containers. In any proceeding before the Board on this issue, the burden of proof shall be on the licensee to show by clear and convincing evidence that the licensee is operating the retail outlet in a commercially reasonable manner.

3.3.c. Evidence that a licensee is unable to open a retail outlet includes, but is not limited to:

3.3.c.1. Probative evidence that the licensee is unable to obtain financing necessary to open a retail outlet;

3.3.c.2. Probative evidence that the licensee is unable to obtain liability and fire insurance for the retail outlet; or

3.3.c.3. Probative evidence that the licensee is unable to obtain all necessary permits, stamps and licenses to open a retail outlet.

3.3.d. Evidence that a licensee is unwilling to open a retail outlet includes, but is not limited to:

3.3.d.1. Probative evidence that the licensee failed to make reasonable efforts to obtain, by purchase or lease, a location for the retail outlet or, having a location, the licensee failed to construct a building, or prepare an existing building, to house a retail outlet.

3.3.d.2. Probative evidence that the licensee failed to make reasonable efforts to:

3.3.d.2.a. Apply for or obtain financing for the retail outlet;

3.3.d.2.b. Interview or hire employees for the retail outlet;

3.3.d.2.c. Apply for or obtain fire and liability insurance for the retail outlet;

3.3.d.2.d. Apply for all necessary certificates, licenses, permits or stamps to do business at a retail outlet including, but not limited to, the basic permit and retail and wholesale stamps issued by the Bureau of Alcohol, Tobacco and Firearms and a business registration certificate issued by the Tax Commissioner.

3.4. Pending Litigation

3.4.a. Whether the operation of any retail outlet in the market zone is prevented by a matter in controversy pending judicial adjudication that will continue for such duration that the opening of a state liquor store is necessary to meet reasonable consumer expectations regarding the availability of liquor in sealed containers is a fact-specific and case-specific issue to be decided by the Board which does not lend itself to governance by a uniform code.

3.5. Reasonable consumer expectations. -- Evidence that liquor in sealed containers is not reasonably available to consumers residing in a market zone includes, but is not limited to:

3.5.1. A resolution filed with the Commissioner adopted upon majority vote of the county commission in whose jurisdiction the market zone is located, in whole or in part, finding that liquor in sealed containers is not reasonably available to individuals residing in that market zone and asking the Commissioner to open a state store.

3.5.2. A resolution filed with the Commissioner adopted upon majority vote of the governing body of a municipal corporation located, in whole or in part, in a market zone, finding that liquor in sealed containers is not reasonably available to individuals residing in the market zone and asking the Commissioner to open a state store.

3.5.3. A petition for a state store filed with the Commissioner signed by 25 percent or more of the individuals residing in voting precincts [or magisterial districts] located, in whole or in part, in the market zone based upon the results of the most recently completed decennial census conducted by the United States government.

3.5.4. A petition for a state store filed with the Commissioner signed by a majority of the private clubs located in the market zone.

3.6. When there is no retail outlet operating in a market zone because the current licensee is unwilling or unable to operate a retail outlet in that market zone and the Commissioner receives a resolution or petition filed under section 3.3 of this rule, the Commissioner shall

forthwith mail or otherwise deliver a copy of the resolution or petition to each member of the Board. The chairman of the Board, after consultation with the Commissioner, shall then schedule a meeting of the Board to consider the resolution or petition. At this meeting, the Commissioner shall present the Board with the Commissioner's preliminary assessment of the situation including, but not limited to:

3.6.1. Whether or not the absence of any operating retail outlet in a market zone is due to the current licensee or licensees being unable or unwilling to operate a retail outlet or is prevented by a matter in controversy pending judicial adjudication that will continue for some duration and the facts upon which the Commissioner relies;

3.6.2. The estimated cost of setting up and operating a state store in the market zone;

3.6.3. The estimated period of time necessary to set up the state store and begin its operation;

3.6.4. The estimated period of time the state store might be in operation before a retail outlet is opened in that market zone by a licensee;

3.6.5. The Commissioner's evaluation of the claim that liquor in sealed containers is not reasonably available to individuals residing in the market zone;

3.6.6. A map showing the boundaries of the market zone, municipalities located in whole or in part in the market zone, the location of retail outlets in market zones adjacent to the market zone for which the resolution or petition was filed, and state roads located in the market zone for which the petition was filed and in adjacent market zones;

3.6.7. Any other information the Commissioner believes to be relevant; and

3.6.8. Any information the Board or the chairman may request prior to the meeting.

3.7. At the meeting of the Board called to consider a resolution or petition filed under subsection 3.3 of this section, the Board may, upon majority vote:

3.7.1. Direct that one or more members of the Board, or the entire Board, hold a public hearing in the market zone to solicit public comments on whether or not liquor in sealed containers is reasonably available to individuals residing in that market zone. Notice of the public hearing shall be published in the State Register at least 20 days before the day of the public hearing;

3.7.2. Act upon the petition or resolution;

3.7.3. Defer action on the petition or resolution;

3.7.4. Request additional information from the Commissioner, the person who filed the resolution or petition with the Commissioner or any interested person who appeared at the public meeting; or

3.7.5. Take any other action within the power of the Board.

3.8. In the event the Board consents to the Commissioner operating a state store in a market zone, the Commissioner shall, as soon as practicable after a licensee opens a retail outlet in that market zone, discontinue operating that state store as provided in W. Va. Code §60-3A-3.

§175.5.4. Limitations on Holding Licenses.

4.1. In general. -- A person may hold, directly or indirectly, one or more Class A retail licenses and one or more Class B retail licenses. However, no individual or other person may directly or indirectly hold, for the same market zone, a Class A retail license and a Class B retail license, or more than one Class B retail license.

Example 1. -- In market zone Alpha, a Class A license will be issued, which authorizes the licensee to operate four retail outlets, and two Class B licenses will be issued. ABC Corporation submits the high bid for each of these licenses. However, ABC Corporation may be awarded only one license, which is the maximum number of licenses that any person may hold for market zone Alpha.

Example 2. -- In market zone Bravo, a Class A license will be issued, which authorizes the licensee to operate two retail outlets, and one Class B license will be issued. ABC Corporation submits the high bid for each of these licenses. Again, ABC Corporation may be awarded only one of these licenses because that is the maximum number of licenses that any person may hold for market zone Bravo.

Example 3. -- In market zone Charlie, two Class B licenses will be issued. John Smith, an individual, submits the high bid for one of the Class B licenses. L&S Partnership submits the high bid for the second Class B license. John Smith owns 50 percent of the L&S Partnership. A Class B license may be awarded to either John Smith, the individual, or to L&S Partnership because no individual or other person may directly or indirectly hold more than one Class B license for a market zone.

Example 4. -- In market zone Delta, a Class A license will be issued authorizing the holder to operate two retail outlets. One Class B license will also be issued. ABC Corporation submits the high bid for the Class A license. L&S Partnership submits the high bid for the Class B license. John Smith owns 51 percent of the L&S Partnership and 60 percent of the stock of ABC Corporation. The Class A license may be issued to ABC Corporation or the Class B license may be issued to L&S Partnership. However, the Class A license may not be issued to ABC

Corporation and the Class B license issued to L&S Partnership because no individual or other person may directly or indirectly hold more than one license for a market zone.

4.2. Aggregate limitation rule. -- No individual or other person may directly or indirectly hold a combination of licenses that, in the aggregate, authorizes that person to operate more than 25 percent of the total number of Class A and Class B retail outlets authorized under the provisions of W. Va. Code § 60-3A-1 et seq. to be operated in this state during the 10-year license period that begins July 1, 2000, or July 1, 2010.

Example 1. -- The Commissioner advertises for bid Class A and Class B retail licenses that, in the aggregate, will allow 180 retail outlets to be operated in this state during the 10-year period that begins July 1, 2000. Twenty-five percent (25%) of 180 retail outlets is 45 retail outlets. ABC Corporation submits bids for Class A and Class B licenses that would authorize it to operate 55 retail outlets should ABC Corporation be the winning bidder for all of those licenses. After the bids are opened, it is determined that ABC Corporation would be the winning bidder for licenses authorizing it to operate 50 retail outlets. Due to the 25 percent rule, ABC Corporation may only be issued licenses that allow it to operate no more than 45 retail outlets. Therefore, when ABC Corporation submits its bids, it needs to prioritize them.

Example 2. -- The Commissioner advertises for bid Class A and Class B retail licenses that, in the aggregate, will allow 180 retail outlets to be operated in this state during the 10-year period that begins July 1, 2000. Twenty-five percent (25%) of 180 retail outlets is 45 retail outlets. ABC Corporation submits bids for Class A and Class B licenses that would authorize it to operate 25 retail outlets should ABC Corporation be the winning bidder for all of those licenses. D&E Corporation submits bids for Class A and Class B licenses that would authorize it to operate 25 retail outlets should D&E Corporation be the winning bidder for all of those licenses. After the bids are opened, it is determined that ABC Corporation would be the winning bidder for licenses authorizing it to operate 25 retail outlets and that D&E Corporation would be the winning bidder for licenses authorizing it to operate 25 retail outlets. However, because ABC Corporation and D&E Corporation are wholly owned subsidiaries of Alphabet Corporation, they are disqualified from holding a license that allows them to operate, in the aggregate, more than 45 retail outlets due to application of the 25 percent rule. No individual or other person may directly or indirectly hold a license that authorizes the operation of more than 45 retail outlets.

4.3. Indirect ownership. -- A license is indirectly held by a person when that license is held by:

4.3.1. Members of a family. For purposes of this rule, the family of an individual includes only his or her brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants, whether by birth or adoption and within the degree of consanguinity of second cousins and persons related by current marriage;

4.3.2. An individual and a corporation if more than 50 percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual;

4.3.3. An individual and a partnership or limited liability company if more than 50 percent in value of the ownership interests is owned, directly or indirectly, by or for that individual;

4.3.4. A partnership and another partnership if the same persons own, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in each partnership;

4.3.5. A limited liability company and another limited liability company if the same persons own, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in each limited liability company;

4.3.6. A partnership and a limited liability company if the same persons own, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in the partnership and the limited liability company;

4.3.7. Two corporations that are members of the same "controlled group" as that term is defined in section 4.6 of this rule;

4.3.8. A grantor of a trust and a fiduciary of a trust created by that grantor;

4.3.9. A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

4.3.10. A fiduciary of a trust and a beneficiary of that trust;

4.3.11. A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

4.3.12. A fiduciary of a trust and a corporation if more than 50 percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

4.3.13. A corporation and a partnership or limited liability company if the same persons own, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation, and more than 50 percent of the capital interest, or the profits interest, in the partnership or limited liability company;

4.3.14. An S corporation and another S corporation if the same persons own, directly or indirectly, more than 50 percent in value of the outstanding stock of each corporation;
or

4.3.15. An S corporation and a C corporation, if the same persons own, directly or indirectly, more than 50 percent in value of the outstanding stock of each corporation.

4.4. Constructive ownership of stock. -- For purposes of applying section 4.3 of this rule, when determining the ownership of stock:

4.4.1. Stock owned, directly or indirectly, by or for a corporation, partnership, limited liability company, estate, or trust shall be considered as owned proportionately by or for its shareholders, partners, members, or beneficiaries:

4.4.2. An individual shall be considered as owning the stock owned, directly or indirectly, by or for his or her family:

4.4.3. An individual owning (otherwise than by the application of subsection 4.4.2 of this section) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his or her spouse:

4.4.4. The family of an individual shall include only his or her brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants, whether by birth or adoption; and

4.4.5. Stock constructively owned by a person by reason of the application of subsection 4.4.1 of this section shall, for the purpose of applying subsections 4.4.1, 4.4.2 or 4.4.3 of this section, be treated as actually owned by that person. However, stock constructively owned by an individual by reason of the application of subsections 4.4.2 or 4.4.3 of this section shall not be treated as owned by him or her for the purpose of again applying either of these paragraphs in order to make another the constructive owner of the stock.

4.5. Constructive ownership in the case of partnerships and limited liability companies. -- For purposes of determining ownership of a capital interest, or profits interest, in a partnership or limited liability company, the principles of section 4.4 shall apply, except that:

4.5.1. Subsection 4.4.3 of this rule shall not apply, and

4.5.2. Interests owned, directly or indirectly, by or for a C corporation shall be considered as owned by or for any shareholder only if the shareholder owns, directly or indirectly, 5 percent or more in value of the stock of that corporation.

4.6. Controlled group of corporations defined; special rules applicable to controlled groups. -- For purposes of this rule, the term "controlled group of corporations" means any group of:

4.6.1. Parent-subsidiary controlled group. -- One or more chains of corporations connected through stock ownership with a common parent corporation if:

4.6.1.a. Stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection 4.7.1 of section 4.7) by one or more of the other corporations; and

4.6.1.b. The common parent corporation owns (within the meaning of subsection 4.7.1 of section 4.7) stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

4.6.2. Brother-sister controlled group. -- Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection 4.7.2 of section 4.7) stock possessing:

4.6.2.a. At least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of the stock of each corporation, and

4.6.2.b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each corporation.

4.6.3. Combined group. -- Three (3) or more corporations each of which is a member of a group of corporations described in subsections 4.6.1 or 4.6.2 of this section and one of which:

4.6.3.a. Is a common parent corporation included in a group of corporations described in subsection 4.6.1 of this section, and also

4.6.3.b. Is included in a group of corporations described in subsection 4.6.2 of this section.

4.7. Rules for determining stock ownership of controlled group.

4.7.1. Parent-subsidiary controlled group. -- For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection 4.6.1 of section 4.6), stock owned by a corporation means:

4.7.1.a. Stock owned directly by the corporation, and

4.7.1.b. Stock owned with the application of subsections 4.8.1, 4.8.2 and 4.8.3 of section 4.8.

4.7.2. Brother-sister controlled group. -- For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection 4.6.2 of section 4.6), stock owned by a person who is an individual, estate, or trust means:

4.7.2.a. Stock owned directly by such person, and

4.7.2.b. Stock owned with the application of section 4.8 of this rule.

4.8. Constructive ownership of stock of corporation.

4.8.1. Options. -- If any person has an option to acquire stock, the stock shall be considered as owned by the person. For purposes of this paragraph, an option to acquire an option, and each one of a series of options, shall be considered as an option to acquire the stock.

4.8.2. Attribution from partnerships and limited liability companies. -- Stock owned, directly or indirectly, by or for a partnership or limited liability company shall be considered as owned by any partner or member having an interest of 5 percent or more in either the capital or profits of the partnership or limited liability company in proportion to his or her interest in capital or profits, whichever proportion is the greater.

4.8.3. Attribution from estates or trusts.

4.8.3.a. Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in the stock, to the extent of his or her actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of the beneficiary and the maximum use of the stock to satisfy his or her rights as a beneficiary.

4.8.3.b. Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under Internal Revenue Code of 1986, as amended: 26 U.S.C. §§ 671 through 679 (relating to grantors and others treated as substantial owners) shall be considered as owned by the person.

4.8.4. Attribution from corporations. -- Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of section 4.7 of this rule) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in the corporation.

4.8.5. Spouse. -- An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year:

4.8.5.a. The individual does not, at any time during such taxable year, own directly any stock in the corporation;

4.8.5.b. The individual is not a director or employee and does not participate in the management of such corporation at any time during the taxable year;

4.8.5.c. Not more than 50 percent of the corporation's gross income for the taxable year was derived from royalties, rents, dividends, interest, and annuities; and

4.8.5.d. The stock in the corporation is not, at any time during the taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his or her children who have not attained the age of 21 years.

4.8.6. Children, grandchildren, parents, and grandparents.

4.8.6.a. Minor children. -- An individual shall be considered as owning stock owned, directly or indirectly, by or for his or her children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his or her parents.

4.8.6.b. Adult children and grandchildren. -- An individual who owns (within the meaning of subsection 4.7.2 of this rule), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

4.8.6.c. Adopted child. -- For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

§175.5.5. General Powers and Duties of Commissioner.

5.1. The Board shall create; Based upon a definitive evaluation and analysis of relevant economic and demographic factors in each county of the State, the Commissioner shall make recommendations to the Board as to how many market zones are necessary, and the Board shall create market zones in each county and provide for the issue of retail liquor store licenses in each market zone. 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. Thereafter, the commissioner shall develop recommendations for the Board to consider relating to:~~

5.1.1. The number of Class A retail licenses and Class B retail licenses to be issued in each market zone;

5.1.2. The number, if any, of designated areas recommended for the market zones;

5.1.3. The minimum bid amounts to be established for each Class A and Class B licenses and designated areas to be authorized by the Board;

5.1.4. The bidding procedures to be utilized;

5.1.5. The factors to be considered in determining a bidder's entitlement to a 5% residential preference and a current licensee's preference; and

5.1.6. The methodology to be followed in selecting the successful bidders.

5.2. The Commissioner shall:

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

5.2.1.a. The prescribed form which has been designed and used for this purpose is attached at Appendix A. The Licensing and Enforcement Divisions of the ABCC work hand-in-hand under the direction of their respective Directors, in an orderly procedure in the initial evaluation of initial applications, and investigators are detailed to make Initial Inspection Reports, attached at Appendix D, which are completed promptly in order that a decision to grant or deny licensure can be made within 30 days following the receipt of the application.

5.2.2. Develop a form of retail license to be issued to each retail licensee under the provisions of W. Va. Code §60-3A-12;

5.2.2.a. The prescribed form which has been designed and used for this purpose is located at Appendix B.

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

5.2.3.a. The Commissioner shall advertise on a state-wide coverage plan giving details about the procedure to be used in the making of sealed, competitive bids for

10-year franchises as retail liquor store owners. These advertisements must contain particulars as to how a person can receive a bid package containing all the information a bidder would need in order to make a bid on a retail store. (In addition, full particulars relating to the bidding procedures are available on the ABCC Website: www.state.wv.us/abcc).

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

5.2.4.a. Standards for advertising are set forth in West Virginia Legislative Rule, Alcohol Beverage Control Administration, Title 175 - Series 1, Section 6, Retail Store Operations the provisions of which are incorporated herein by reference.

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

5.2.5.a. The standard for each retail outlet shall be determined by the Commissioner based upon community/market zone needs and best management practices.

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

5.2.7. Impose civil penalties upon retail licensees;

5.2.7.a. The procedures to be followed by the Commissioner in imposing civil penalties upon retail licensees are set forth and explained in section 26 of this rule and in W.Va. Code §60-3A-26.

5.2.8. 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(c)(2).

5.2.9. Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of ~~West Virginia Code~~ W.Va. Code §60-3A-26 or §60-3A-27 or §60-3A-28 and Sections ~~sections 175-5-25 or 175-5-27 of these regulations~~ 28, and 29 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 were set forth in *extenso* in W. Va. Code §60-3A-1, *et seq.*, and this rule.

5.2.10. Settle, through the hearing procedure provided in §175.5.29 disputes relative to the boundaries of market zones and designated areas within market zones.

§175-5-6. Duties of Successful Bidders for Class A Licenses To Open and Operate Its Authorized Stores; Limitation on number of retail outlets a person may hold.

6.1. 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 ninety (90) days following July 1, 2000 or within ninety days following the date upon which he or she or 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.

6.1.1. Any person who acquires such a license subsequent to July 1, 2000, as a result of a purchase made during a competitive, rebid process, or as a result of a license transfer approved by the Commissioner, shall be required to comply with the opening of all authorized stores on a date specified by the Commissioner and shall operate such stores for a minimum period of one year.

6.2. 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 to operate in the State.

§ 175-5-7. Retail License Application Requirements; Federal Licensing Requirements.

7.1. Following selection of the successful bidders, they shall file an "Application For Retail Liquor Store License" form, a copy of which is attached as Appendix A, with the Commissioner. In addition to answering the questions asked on the Application, the Applicant shall attach a copy of its corporate charter or other agreement under which the entity operates to its Application, and shall add the name of the market zone and the county in question number four (4) relating to its mailing address.

7.2. A person who purchases alcoholic liquors for resale to retail customers 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. As of July 1, 2000, the cost of this tax stamp is two hundred and fifty dollars (\$250) per year.

7.2.1. 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.

7.2.2. 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 purchased and displayed in each retail store before a retail licensee can engage in the retail sale of liquor.

7.3. The Commissioner shall not issue a retail license to an applicant who 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.

7.3.1. 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.

7.3.2. 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 ATFF 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.

7.3.3. A "NOTICE TO ALL BIDDERS FOR RETAIL LICENSES -- FEDERAL LIQUOR DEALER PERMITS AND TAX STAMPS REQUIRED" is attached as Appendix C

§175.5.8. Investigation of Applicants for Retail License.

8.1. Upon Following receipt of an a completed application for a retail license containing and such supplemental information as the Commissioner may require, the Commissioner may conduct such investigation of an applicant as deemed necessary or desirable in determining whether the applicant is qualified to receive a retail liquor store license.

8.1.1. The Commissioner, after initial examination and evaluation of the application may determine that an Initial Inspection Report is warranted and, accordingly, have one made by a staff investigator using the "West Virginia Alcohol Beverage Control Commission Licensing Division Initial Inspection Report Form", a copy of which is attached as Appendix D.

8.2. 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.

§175.5.9. Bidding Procedure.

9.1. The issuance of retail licenses shall be based on sealed competitive bids which have been submitted on Bid Forms which have been completed in accordance with written instructions from the commissioner.

9.1.1. A "BID FORM" is attached as Appendix E and a 2-page "INSTRUCTIONS TO COMPLETE BID FORM" is attached as Appendix F.

9.1.2. 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.

9.2. Each person desiring to submit a bid shall file the bid with the West Virginia Secretary of Administration, Purchasing Division, 2019 Washington Street, East, P.O. Box 50130, Charleston, West Virginia 25305-0130 prior to March 3, 2000 at 1:30 o'clock p.m. The Purchasing Division will safeguard the bids and will conduct the opening of the bids on March 3, 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.

9.2.1. 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, the Director of the Purchasing Division, 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 deliver all of the bids and the Affidavit to the Commissioner's office or to his designee.

9.2.2. 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 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.

9.3. The Commissioner shall notify the successful bidders of their winning bids and of the deadline for bid payment which 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.

9.3.1. 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 §175.5.12 of this rule shall be forfeited and the bidder shall not be issued the retail license.

9.3.2. 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 the basic permit in which case the bid bond shall be forfeited.

9.3.3. In either event, the Commissioner shall issue the retail license to the next highest bidder for the retail license or reject all bids and rebid the license in accordance with the bid procedures contained in the provisions of W.Va. Code §60-3A-10 and this rule.

9.4. The successful bidder shall remit the bid price and the annual retail license fee, as specified in W. Va. Code §60-3A-13, to the Commissioner by money order, certified check, or cashier's check. Payment must be received in the Commissioner's office no later than 4:00 p.m. on Thursday, May 25, 2000. In the event that the Board determines that a necessity exists to require additional bids, then bids will be taken pursuant to the provisions of W.Va. Code §60-3A-1, et seq., and this rule.

9.5. 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.

9.5.1. The bidders shall be notified to meet at the Commissioner's office at a specified date and time.

9.5.2. At the time of the meeting the names of the affected bidders shall be written on individual slips of paper, and placed in a hat or similar container.

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

§175.5.10. Preference for resident bidders.

10.1. In determining the highest responsible bidder for purposes of W.Va. Code §60.3A.10a, and §175.5.10 of this rule, the Board shall afford a five percent (5%) preference for West Virginia 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.

10.1.1. 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.

10.2. 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:

10.2.1. 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

Example 1. The minimum bid for a Class A retail license is \$300,000. Two bids are received. A West Virginia resident bidder submits a bid of \$305,000 and a nonresident submits a bid of \$310,000 for that license. The bid is awarded to the West Virginia resident bidder. [$\$300,000 + \$15,250.00$ (which is 5% of \$305,000) equals \$315,250.00 which is greater than the bid of \$310,000 submitted by the nonresident bidder.]

Example 2. The minimum bid for a new Class B retail license is \$200,000. Two bids are received. A West Virginia resident bidder submits a bid of \$200,000 and a nonresident submits a bid of \$215,000 for that license. The bid is awarded to the nonresident bidder. [$\$200,000 + \$10,000$ (which is 5% of \$200,000.00) equals \$210,000, which is less than the bid of \$215,000 submitted by the nonresident bidder.]

Example 3. The minimum bid for a new Class B retail license is \$200,000. Two bids are received. A West Virginia resident bidder submits a bid of \$190,000 and a nonresident submits a bid of \$205,000 for that license. The bid is awarded to the nonresident bidder because the resident bidder failed to bid the minimum bid amount. The 5 percent resident bidder preference does not apply in this example.

10.2.2. 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.

10.3. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.

Example 1. ABC Corporation is a Delaware corporation whose corporate headquarters has been located continuously in West Virginia since July 1, 1990. ABC Corporation is a West Virginia resident for purposes of the preference allowed by W. Va. Code §60-3A-10a and this section.

Example 2. D & E Corporation is incorporated under the laws of West Virginia. Its corporate headquarters is located in Alpha State. D & E Corporation is not a West Virginia resident for purposes of the preference allowed by W. Va. Code §60-3A-10a and this rule.

Example 3. A corporation, whether incorporated in West Virginia or in another State, that operates retail outlets in this State but does not have its headquarters in this State is not a West Virginia resident.

Example 4. A partnership, limited liability company or other legal entity that is not a corporation, whether formed under the laws of this or another State, that operates one or more retail outlets in this State but does not maintain its headquarters or principal place of business in this State is not a West Virginia resident for purposes of the resident vendor preferences allowed under W. Va. Code §§ 60-3A-10a and 60-3A-10b and this rule.

10.4. 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 months immediately prior to the date on which the bid is opened, did as follows:

10.4.1. 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;

10.4.2. Maintained its headquarters or principal place of business in this State;

10.4.2.a. Whether or not the person other than an individual maintained its headquarters or principal place of business in this State for the required period can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, that the period of time the person’s headquarters or principal place of business was continuously located in this State met the time requirement, as of the date the affidavit is signed and properly acknowledged, and stating that that address will remain the same as of the date on which the bids are to be opened. In addition to the submission of an affidavit, the person shall also be required to provide documentary proof that that person has complied with all other requirements specified in section 10a.4 of this rule.

10.4.3. 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

10.4.4. 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 ABC 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. An “Authorization to Release Information” form prepared by the West Virginia State Tax Commissioner is attached as Appendix G.

10.5. 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 Registration 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 two 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.

10.5.1. An individual may prove that he or she continuously resided in this State during the required period ending with the day the individual's bid is opened by submitting with his or her bid form an affidavit signed and acknowledged, under penalty of perjury, certifying the period of time the individual continuously resided in this State, as of the date the affidavit is signed and acknowledged, and stating that he or she intends to be a resident of this State on the day his or her bid is opened. In addition to this affidavit, the individual will also be required to submit supporting documents in proof of his or her residency during the required period.

10.6. 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. The documents must establish that the requirements of section 10.4 of this rule have been satisfied.

10.7. A bidder who feels believes he meets the requirements for residency must affirmatively assert his or her claim on the official application form to receive this preferential treatment.

10.8. A supplemental 2-page guideline for bidders seeking a residential preference is attached as Appendix H.

§175.5.11. Criminal Penalties For Unlawful Inducement.

11.1. It is unlawful for Any any person who to gives give another person any thing of value to induce the other to refrain from bidding for a retail license. Any person doing so 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).

11.2. It is unlawful for Any any person who to gives give another person any thing of value to induce the other to refrain from operating an outlet authorized under a retail license. Any person doing so 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).

§175.5.12. Bonding Requirements.

12.1. Each applicant submitting a bid or bids for a retail license under ~~W. Va. Code § 60-3A-10 and §175-5-10~~ the provisions of this rule, shall furnish to the Commissioner a bond at the time of bidding, ~~which~~ The 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.

12.2. A 4-page "Approved Format for Irrevocable Letter of Credit" is attached as Appendix I.

§175.5.13. Annual Retail License Fee.

13.1. The annual retail license fee for a Class A retail license is the sum obtained by multiplying the number of retail outlets ~~operated by~~ authorized for 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).

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

§175.5.14. 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~~ the person's qualifications to hold a retail license, ~~which~~ Those qualifications shall be are the same as those required by W. Va. Code §60-3A-8 and §175-5-8 of ~~these regulations~~ 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~~ The Commissioner's 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 60a-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~~ When a retail licensee ~~may~~ surrenders a retail license to the Commissioner ~~or when it is revoked or forfeited, 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-rata return of the initial bid or of any annual license fee which has been paid the Commissioner.~~

15.2. The effective date of a rebid license under this section shall be only for the portion of the 10-year license remaining after the bid is awarded.

§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.

16.2. The provisions of West Virginia W. Va. Code §60-3A-16 and this subsection shall do not apply to the location of a retail licensee who, on February 27, 1990, the date of the passage of the State Retail Liquor Act holds 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.

17.1. The Commissioner has fixed wholesale prices for the sale of liquor, other than wine, to retail licensees. The Commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule.

17.1.1. The Commissioner has established wholesale prices for the sale of liquor to retail licensees which is based upon the delivered cost of distilled spirits which ABCC purchases plus a mark-up of 25%. A shipping and handling charge of one dollar and five cents (\$1.05) per case delivered will be added to the total purchase price.

17.1.2. A uniform pricing schedule is maintained by the publication of an ABCC "Wholesale Spirits Catalog" which is sent to all retail licensees on a quarterly basis on February 1, May 1, August 1 and November 1 of each year. This catalog contains all alcoholic products normally available from the ABCC in addition to complete product information and pricing structure.

§175.5.18. Days and Hours Retail Licensees May Sell Liquor.

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 not be sold between the hours of two o'clock a.m. and one o'clock p.m. on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on week days and Saturdays.

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 §60-7-2.

§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. 176 C.S.R. Series 1, contains the rule for nonintoxicating beer licensing and operations procedures.

§175.5.21. Tax on Purchases of Alcoholic Liquor.

21.1. In addition to the cost of alcoholic liquor, a State tax authorized by W.Va. Code §60-3A-21 of five percent (5%) of the purchase price must be added to all purchases from retail licensees, and the tax must be collected with the purchase price by the retail licensee.

§175.5.22. Requirement for Posting Information Signs.

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 warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy.

22.3. 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~~ Each retail licensee must keep a record in book form showing the date that all distilled spirits, wine and beer were received on his, or her, or its premises, and from whom received.

23.2. ~~Every~~ Each retail licensee shall also maintain records including ABCC 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 ~~West Virginia Code article 60-7~~ W. Va. Code §60-7-2. A copy of ABCC Form 190 is attached as Appendix J .

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

23.2.2. Each retail licensee must send a copy of ABCC Form 190 to the ABCC Nitro Warehouse each week, together with the Weekly Invoice which is a computer printout of the products ordered and delivered each week to a retail licensee. The driver of the delivery truck will take the ABCC Form 190's and the ABCC Weekly Invoice to the Nitro Warehouse each week. A copy of the ABCC Weekly Invoice is attached as Appendix K.

23.2.3. Failure by a retail licensee to comply with the provisions of subsection 23.2.2 will subject him, or her, or it, to assessment of a Civil Penalty under the provisions of W. Va. Code §60-3A-26.

23.3. Records required to be maintained by this Section 23 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. It shall be unlawful for Any 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. Any person who violates the provisions of W.Va. Code §60-3A-24(b) 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. It shall be unlawful for Any any person who to 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. Any person who violates the provision of W.Va. Code §60-3A-24(c) 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. It shall be unlawful for No a person while on the premises of a retail outlet may to 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(d) 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. It shall be unlawful for Any any person under the age of twenty-one years who to purchases, consumes, sells, serves or possesses alcoholic liquor. Any person who violates the provisions of W.Va. Code §60-3A-24(a) 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-1, *et seq.*, 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;

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 this section is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred dollars (\$100) or no more than five thousand dollars (\$5,000), or imprisoned in the regional jail for not less than thirty (30) days nor more than one (1) year or both fined and imprisoned.

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.*, any rule promulgated by the Board or any rule promulgated by the Commissioner may be assessed a civil money penalty by the Commissioner. The amount of this money penalty may not exceed one thousand dollars (\$1,000) for each violation of the Act, the Board rule or a rule of the Commissioner.

26.2. Each day the violation continues shall constitute a separate violation.

§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.

§175.5.28. Revocation of License For Failure to Operate Retail Outlet & Forfeiture of Retail Outlet for Failure to Operate Retail Outlet.

28.1. Revocation. -- The Commissioner, after employing criteria prescribed by the Board in §202-1-19 of its pending, proposed legislative rule, may revoke a Class A retail license if the licensee fails to operate at least one of the retail outlets authorized under the license and may revoke a Class B retail license if the licensee fails to operate the retail outlet authorized under the license.

28.2. Disqualification of current licensee whose license is revoked. -- When a license is revoked under W. Va. Code § 60-3A-27a(a), the Commissioner may not accept the bid of the person who had the license revoked, or of a related person, when the license is offered for bid following the revocation. As used in this subsection, a bidder is a "related person" when the relationship between the bidder and the person whose license was revoked is such that the latter indirectly owns or controls the bidder under the provisions set forth in section 5.3 of this rule.

28.3. Procedural due process. -- A revocation of a Class A or B license under W. Va. Code § 60-3A-27a is subject to the provisions for notice, hearing and judicial review prescribed in W. Va. Code §60-3A-28.

28.4. Forfeiture of authorization to operate retail outlet. -- When a person operates at least one of the retail outlets authorized under a Class A license but fails to operate the entire number of retail outlets authorized under the license, the Commissioner may, after employing criteria prescribed by the Board, reduce the number of retail outlets the person is authorized to operate under that license by the number not being operated. As used here, "failure to operate a retail outlet" includes, but is not limited to:

28.4.1. Total failure to open and operate a retail outlet within ninety (90) days after July 1, 2000, or the day the person is awarded the license, whichever day occurs last;

28.4.2. Failure to reopen the retail outlet within 90 days after it is closed, unless the closure was due to fire, flood or other act of God, war, riot, or other catastrophe as to which negligence or willful misconduct on the part of the licensee or a person under the control of the licensee was not the proximate cause, unless the reopening is prevented by a matter in controversy pending judicial adjudication on or before the 60th day;

28.4.3. Failure to reopen the retail outlet within 180 days after it was closed due to fire, flood or other act of God, war, riot, or other catastrophe as to which negligence or willful misconduct on the part of the licensee or a person under the control of the licensee was not the proximate cause, unless the reopening is prevented by a matter in controversy pending judicial adjudication on or before the 180th day; or

28.4.4. Failure to operate a retail outlet in a commercially reasonable manner as defined in subsection 3.3.b. of this rule.

Example 1. -- The holder of a Class A license authorizing the operation of two retail stores opens the second retail outlet but operates it only six hours per week.

28.5. Issuance of Class B license. -- The Board may authorize the Commissioner to issue, subject to the bid requirements of W. Va. Code §60-3A-10, a Class B license for each retail outlet for which authority to operate is forfeited under section 28 of this rule. The Board shall set a minimum bid for each Class B license.

28.6. Procedural due process. -- A reduction in the number of retail outlets that may be operated by the holder of a Class A license under W. Va. Code §60-3A-27a is subject to the provisions for notice, hearing and judicial review prescribed in W. Va. Code §60-3A-28.

§175.5.29. Notice of and Hearing on Boundary Disputes.

29.1. 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.

29.1.1 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.

29.1.2. 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.

29.1.3. 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 is to be sent by certified mail, return receipt requested to the addresses provided by the petitioner.

29.2.—~~Such~~ The 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.

29.3. Any person adversely affected by an order entered following ~~such~~ a 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.

29.4. 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.

29.5. Each party shall be responsible for his own legal representation.

**West Virginia Legislative Rule
Title 175 - Series 5
APPENDIX and REFERENCES**

- APPENDIX A A two-page "Application for Retail Liquor Store License"
- APPENDIX B "License to Engage in the Business of Operating a Retail Liquor Store"
- APPENDIX C "Notice to All Bidders for Retail Licenses -- Federal Liquor Dealer Permits and Tax Stamps Required"
- APPENDIX D A two-page "West Virginia Alcohol Beverage Control Commission Licensing Division Initial Inspection Report Form"
- APPENDIX E A "Bid Form"
- APPENDIX F A two-page "Instructions To Complete Bid Form"
- APPENDIX G A two-page "Authorization To Release Information" by the West Virginia State Tax Commissioner
- APPENDIX H A two-page guideline for "Residential Bid Preferences"
- APPENDIX I A four-page "Approved Format for Irrevocable Letter of Credit" Form
- APPENDIX J ABCC Form 190
- APPENDIX K A three-page "ABCC Weekly Invoice"

Provisions of W. Va. Code which are incorporated into this rule by reference:

- §2-2-1, into §175-5-9.3.3.
- §2-2-2, into §175-5-9.3.3.
- §29A-1-1, *et seq.*, into §175-5-6.3.2.
- §29A-3-15, into §175-5-1.2.
- §29A-5-1, into §175-5-6.2.9.
- §29A-5-4, into §175-5-28.3.
- §29A-6-1, into §175-5-28.4.
- §60-6-24, into §175-5-22.1.
- §60-7-2, into §175-5-23.2.
- §60-8-34, into §175-5-18.1.

9. IF APPLICANT AND PROPOSED LIQUOR LICENSE HOLDER IS A:

•CORPORATION:

REGISTERED NAME: _____

PLACE AND DATE OF INCORPORATION: _____ / ____ / ____
(DATE)

•PARTNERSHIP:

REGISTERED NAME: _____

PLACE AND DATE OF ORGANIZATION: _____ / ____ / ____
(DATE)

10. CONVICTIONS - MUST BE ANSWERED. HAVE ANY OF THE PERSONS OR ENTITIES LISTED IN ITEM NUMBER EIGHT (8) BEEN CONVICTED OF ANY OFFENSE AGAINST THE LIQUOR LAWS OF THE UNITED STATES, OR ANY STATE THEREOF, OR ANY FELONY CONVICTION IN THE STATE OF WEST VIRGINIA? YES _____ NO _____ IF ANSWER IS 'YES', THE FOLLOWING INFORMATION MUST BE FURNISHED ALONG WITH THIS FORM:

10A. NAME OF PERSON OR ENTITY.

10C. PLACE AND DATE OF JURISDICTION AND COURT.

10B. NATURE OF OFFENSE OR CONVICTION.

10D. THE SENTENCE AND/OR FINE.

11. A COPY OF: FEDERAL BASIC PERMIT OR WHOLESALE PERMIT, FOR PERIOD ENDING 30 JUNE 2001, MUST BE ATTACHED

12. NUMBER OF EMPLOYEES WORKING IN THIS LOCATION BETWEEN THE AGES OF 16-18 YEARS _____

STATEMENT - THE FOLLOWING STATEMENT MUST BE SIGNED BY ALL INDIVIDUALS OR ENTITIES LISTED IN ITEM NUMBER EIGHT (8):

THE UNDERSIGNED HEREBY SWEARS OR AFFIRMS THAT HE OR SHE HAS READ THIS APPLICATION, THAT ALL THE STATEMENTS SET FORTH HEREIN ARE TRUE AND CORRECT, AND THAT THE APPLICANT IS THE ONLY PECUNIARILY INTERESTED IN THE BUSINESS FOR WHICH LICENSE IS REQUIRED. I/WE AGREE TO NECESSARY BUSINESS, FINANCIAL, AND CONVICTION BACKGROUND INVESTIGATIONS NECESSARY TO ISSUE THE REQUESTED LICENSE. IF ONE OR MORE LICENSES ARE GRANTED, THE PERSON(S) MAKING THIS APPLICATION HEREBY AGREE(S) TO COMPLY AT ALL TIMES WITH, AND OBSERVE ALL PROVISIONS OF CHAPTER 60 OF THE WEST VIRGINIA CODE AND ALL LAWS OF THIS STATE AND THE RULES AND REGULATIONS PROMULGATED BY THE ALCOHOLIC BEVERAGES DIVISION RELATING TO ALCOHOLIC LIQUORS, WINE, AND BEER.

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____

DATE _____

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____

DATE _____

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____

DATE _____

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____

DATE _____

NOTARY:

STATE OF _____ COUNTY

OF _____

ON THIS _____ (DAY) _____ (MONTH) _____ (YEAR) _____ (NAMES OF PERSONS SIGNING ABOVE), THE ABOVE

BEFORE ME. HEREBY SWEARS OR AFFIRMS THAT HE OR SHE HAS READ THIS APPLICATION, THAT ALL THE STATEMENTS SET FORTH HEREIN ARE TRUE AND CORRECT, AND THAT THE APPLICANT IS THE ONLY PECUNIARILY INTERESTED IN THE BUSINESS FOR WHICH LICENSE IS REQUIRED.

SWORN TO AND SUBSCRIBED BEFORE ME

(SIGNATURE OF NOTARY PUBLIC)

(SEAL)

MY COMMISSION EXPIRES:

PLEASE SEE REVERSE SIDE FOR AN IMPORTANT MESSAGE!

APPENDIX B

EFFECTIVE DATES:

JUL 1st, 1999 - JUN 30th, 2000

1999-2000



State of West Virginia

Office of West Virginia Alcohol Beverage Control Commissioner, ss:

LICENSE NUMBER

17-B-100-002980

OFF PREMISE

This is to certify that the undersigned, in pursuance of the authority vested in the Commissioner by CHAPTER 60, ARTICLE 3A-1

has this day granted in the name and for the place of business set out below this

LICENSE TO ENGAGE IN THE BUSINESS OF
RETAILER

LICENSE TO OPERATE A LIQUOR STORE. LIQUOR SALES ONLY PERMITTED.

MAILING ADDRESS:

CREIGHTON CORPORATION
CREIGHTON'S SHINNSTON FOODLAND
540 SOUTH PIKE STREET
SHINNSTON, WV 26431

PHYSICAL ADDRESS:

CREIGHTON CORPORATION
CREIGHTON'S SHINNSTON FOODLAND
540 SOUTH PIKE STREET
SHINNSTON, HARRISON, WV 26431

Given under my hand this,

the 15th day of JUNE, 1999

Notice: This license is issued only to the Licensee named above for use as specified, and cannot be abandoned, loaned, rented, or leased, and is not assignable or transferable.

992842 FILE-COPY

Commissioner

Post in a CONSPICUOUS place at the location for which issued. "PERMANENT LICENSE" - post under glass on licensed premises

**NOTICE TO ALL BIDDERS FOR RETAIL LICENSES
FEDERAL LIQUOR DEALER PERMITS AND TAX STAMPS REQUIRED**

1. Successful bidders must acquire a Federal Wholesaler's Basic Permit unless they have already obtained one as a current licensee in West Virginia, and they must also acquire a "Wholesale Dealers In Liquor Tax Stamp" and a "Retail Dealers In Liquor Tax Stamp" before they can legally engage in the retail and wholesale liquor business in West Virginia. **IT IS NOW MANDATORY THAT ALL HOLDERS OF RETAIL LIQUOR LICENSES IN WEST VIRGINIA HAVE THE FEDERAL WHOLESALER'S BASIC PERMIT AND THE TWO TAX STAMPS MENTIONED HEREIN EVEN IF THE STORE DOES NOT SELL TO PRIVATE CLUBS.**

2. A person who purchases alcoholic liquors for resale 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 making any retail sales of alcoholic liquors. The cost of this tax stamp is currently two hundred and fifty dollars (\$250) per year.

3. Current licensees who are successful bidders must renew this stamp when notified by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

4. Successful bidders who are not the current licensee shall 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 to obtain a Retail Dealer In Liquors Tax Stamp. This stamp must be purchased for and displayed in each retail store before a retail licensee can engage in the retail sale of liquor at that location.

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

6. 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 renew them when notified by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

7. 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 mail 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.

**WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSION
LICENSING DIVISION
INITIAL INSPECTION REPORT**

CLASS B

COUNTY: _____ TELEPHONE #: _____

APPLICANT: _____

DBA: _____

PHYS. ADDRESS: _____
STREET/ROUTE CITY ZIP

MAILING ADDRESS: _____
STREET/ROUTE CITY ZIP

TYPE OF LICENSE APPLYING FOR: _____

** IF CORPORATION, ASSOCIATION OR LIMITED LIABILITY COMPANY, LIST THE NAME, ADDRESS, TITLE & TELEPHONE NUMBER OF THE PERSON REPORT IS COMPLETED ON: _____

1. STATE TAX #: _____

2. PREVIOUSLY LICENSED BY: _____ DBA: _____
LICENSE NUMBER: _____

3. HAS APPLICANT BEEN PREVIOUSLY LICENSED: _____ APPLICANT NAME: _____
DATE: _____ LICENSE NUMBER: _____

4. HAS THE APPLICANT BEEN CONVICTED OF A FELONY? _____
IF YES, WHEN? _____ WHERE? _____
MISDEMEANOR CONVICTION WITHIN THE LAST 5 YEARS OF VIOLATION OF ANY ABC LAWS? _____

5. YEARS OF WV RESIDENCY: _____ AGE: _____ SEX: _____ DOB: _____
PLACE OF BIRTH: _____ SOCIAL SECURITY #: _____
U.S. CITIZEN? _____ BY BIRTH OR NATURALIZATION? _____
IF NATURALIZATION, WHEN: _____ WHERE: _____

6. WV OPERATOR'S LICENSE #: _____ DATE ISSUED: _____
VEHICLE LICENSE IN WV: _____

7. IS APPLICANT OWNER OF BUILDING? _____ LEASING? _____ VERIFIED? _____
IF LEASED, GIVE NAME & ADDRESS OF OWNER: _____

8. ARE THE FOLLOWING ACCEPTABLE? GENERAL APPEARANCE INSIDE AND OUTSIDE? _____
NUMBER OF FLOORS: _____ FLOOR LOCATION: _____

9. ESTIMATED WHOLESALE VALUE OF INVENTORY OF FOOD (FOR THE TABLE)? _____
THIS ESTIMATE IS BASED ON: _____

10. ESTIMATE RETAIL SALES PER MONTH OF FOOD (FOR THE TABLE): \$ _____
THIS ESTIMATE IS BASED ON: _____

11. IF A WINE SPECIALTY SHOP, WILL APPLICANT SELL ONLY WINE ACCESSORIES AND FOOD OR FOOD

STUFFS NORMALLY ASSOCIATED WITH WINE: _____ EXPLAIN: _____

12. IS THERE IN THE STORE \$3,000 OR MORE IN FOOD ITEMS, EXCLUDING SNACK FOOD AND SOFT DRINKS?
EXPLAIN: _____

13. IF THIS IS A NEW BUSINESS, WILL SALES AND INVENTORY EXCEED \$3,000? _____

14. PLEASE NOTE ANYTHING THAT SHOULD BE CONSIDERED BEFORE LICENSE IS ISSUED: _____

APPLICANT'S SIGNATURE: _____

TITLE: _____ DATE: _____

INSPECTOR'S SIGNATURE: _____ DATE: _____

RECOMMENDATION: _____

BID FORM

WEST VIRGINIA DEPARTMENT OF TAX & REVENUE
Alcohol Beverage Control Administration
(See Instructions included with this package)

1. Name, Address, Phone Number of Applicant:

- a. Full Name: _____ Phone: (____) _____
- b. Business Name: _____
- c. Street Address: _____
- d. City, State: _____ Zip Code: _____
- e. Name of Person(s) to contact: _____
- f. Contact phone number concerning bid acceptance and right of first refusal (____) _____

2. Preferences:

- a. Claiming West Virginia Residency Status? Yes No
- b. Claiming Current Retailer Licensee Preference Yes No

3. Market Zone Bid Information:

Please enter your bid for this market zone in the columns below:

Market Zone # (County)	Class A License	Class B License	Designated Area Class B	License Preference	Bond Amount

Type of Bond(s): Surety Bond Letter of Credit Cash

Signature of Applicant: _____ Date: _____

Title: _____

INSTRUCTIONS TO COMPLETE BID FORM

The completed Bid Form must be received in the WV Department of Administration, Purchasing Division no later than 1:30 P. M. E.S.T., March 3, 2000. The pre-addressed (blue) envelope which is included with this package must be used for your bid. Additional envelopes are available at the ABCA Central Office. If additional bid envelopes are needed, please call (304) 558-2481.

The bid form (including attachments) must be completed in its entirety by all bidders and signed by an authorized representative of the entity. Failure to complete the bid form or provide all information requested may result in the disqualification of the bid.

Include bids for all licenses within a market zone on one bid form. Separate bid forms must be submitted for each market zone in which a license is being bid.

Applicants should read the enclosed Proposed Emergency Rules and Regulations, House Bill 3023, and these instructions in their entirety before completing the bid form. Failure to comply with the requirements contained in each could result in the disqualification of the bid.

Section 1

Provide all information requested. Incomplete information may result in delays in awarding licenses. Information in this section will be used to contact unsuccessful bidders with the right of first refusal.

Section 2

Preferences for residency and current licensees are claimed here. Conditions for claiming the residency preference are found in §175-5-10a in the enclosed Proposed Emergency Rules and Regulations. Proof of meeting such requirements should be attached to the completed bid form. Current retail licensees should attach a copy of their license to the completed bid form to claim the current retail licensee preference.

Section 3

For each license on which you are submitting a bid, enter the market zone, license class, license number, bid amount, priority, and bond amount in the corresponding columns in this section. Attach additional sheets if necessary.

Multiple Bids

Applicants may submit bids on more than one license in each market zone. However, you will be awarded only one license in each market zone. Applicants submitting bids for more than one license in each market zone should indicate the priority of the bids made. This priority will determine the license that will be awarded where the applicant is the highest bidder on more than one license in a market zone.

Bond Amounts

Each applicant is required to submit a bond equal to 25% of the amount bid for any license. Where two or more licenses are bid within a single market zone, the bond amount must be equal to the highest amount bid for any license within that zone. For example, an applicant bidding \$2 million for an A license and \$1 million for a B license in the same market zone must post a bond in the amount of \$500,000 - 25% of the \$2 million highest bid.

Bidders must total the required bond amount for each market zone bid and furnish with your bid an appropriate

bond equal to the sum of the required bond amounts for each market zone bid. The bond may be submitted in the form of a surety bond, irrevocable letter of credit, cash or negotiable securities. The ABCA and the WV Purchasing Division strongly advises against enclosing cash or negotiable securities. The State of West Virginia and its Divisions will not be responsible for lost or stolen cash and/or negotiable securities submitted with bids. Please note that bonds provided in the form of an irrevocable letter of credit should conform to the suggested wording that has been furnished to you with these materials.

Bidders are strongly advised to carefully review their bid forms to insure that the bid amount has been entered in the correct box corresponding to the type of license and market zone for which a bid is intended.

If you have any questions concerning the completion of the bid form, please call John Rutherford at (304) 558-2481.

DISCLAIMER

The WV Department of Tax & Revenue and the ABCA cannot guarantee that the liquor licensing process will result in profitable ventures for all licensees as the licensee must determine many of the factors influencing the success of the investment in the license such as retail prices, store hours, product mix, administrative expenses and many other factors. As a result, bidders should consider the inherent risks associated with this investment.

Authorization to Release Information

APPENDIX G

Name of taxpayer _____ Date _____

Address _____

City, Town, Post Office _____ State _____ Zip Code _____

West Virginia Identification No. or Social Security No. _____

The above named taxpayer does hereby waive the confidentiality provisions of West Virginia Code § 11-10-5d and/or § 11A-23 to the following extent:

1. Persons to whom information may be released:

Name Donald L. Stemple Capacity Commissioner, ABCA

Address 322 70th Street, SE, Charleston, WV 25304

2. Effective period of this waiver:

X authorization terminates June 30 2000
month day year

_____ until my liability for West Virginia taxes is liquidated.

_____ (other: explain) _____

3. Taxes and/or credits to which this waiver applies:

	W. Va. Code Art.		W. Va. Code Art.
_____ Beer Barrel Tax	11-16	_____ Severance Tax	11-13A
<u>X</u> Business and Occupation Tax	11-13	_____ Soft Drink Tax	11-19
<u>X</u> Business Franchise Tax	11-23	_____ Telecommunications Tax	11-13B
_____ Business Investment and Jobs Expansion Credit (Super Credit)	11-13C	_____ Use Tax	11-15A
<u>X</u> Business Registration Tax	11-12	_____ Wine Liter Tax	60-8
_____ Cigarette Tax	11-17	_____ Charitable Raffle Boards & Games	47-23
<u>X</u> Consumers Sales & Service Tax	11-15	<u>X</u> Solid Waste Fee	20-5F
<u>X</u> Corporate Net Income Tax	11-24	_____ Corporate License Tax	11-12C
_____ Employers Withholding Tax	11-10	_____ Minimum Severance Tax on Coal	11-12B
_____ Estate Tax	11-11	_____ Health Care Provider Taxes	11-27
_____ Gasoline & Special Fuel Excise Tax	11-14	<u>X</u> All of the above applicable to the taxpayer.	
_____ Inheritance Tax	11-11	<u>X</u> Property Taxes	
_____ Motor Carner Road Tax	11-14A	_____ OTHER	
<u>X</u> Personal Income Tax	11-21		

4. Information to be released: (describe specifically)

That from January 1, 1996 to date, taxpayer filed all tax returns and reports and purchased all licenses/permits required under W. Va. tax laws.

5. Reason(s) why information is to be released:

APPENDIX G - P2

To determine if the taxpayer is qualified to receive a 5% residential preference
on the competitive bid he/she is making on the right to operate a retail liquor store
for 10 years beginning July 1, 2000.

This waiver will be effective only to the extent explained above and any other release of information is not permitted without additional authorization. Additionally, information will be released only to the extent necessary to comply with this request for information, and will not be disclosed if the Tax Commissioner determines that such disclosure would seriously impede administration of this State's tax laws.

This waiver must be signed by the taxpayer. If this waiver is by a corporation, it must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a partnership as defined for federal income tax purposes, this waiver shall be signed by a partner or any employee of the partnership duly authorized so to act. The fact that an individual's name is signed on the waiver shall be prima facie evidence that such individual is authorized to sign the waiver on behalf of the corporation or partnership.

Signature

Capacity

Date

State of West Virginia,

County of _____, to-wit,

This day appeared before me, the undersigned notary public, _____ who acknowledge under oath the signature above.

Notary Public

Date

My commission expires _____

RESIDENTIAL BID PREFERENCES

Preference for resident bidders.

1. In determining the highest bidder for retail liquor store licenses, a five percent (5%) preference for West Virginia resident bidders, shall be computed by 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.
2. This preference shall not be added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.
3. A bidder shall be considered a West Virginia resident if the bidder:
 - a. 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:
 - b. 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.
4. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.
5. 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 months immediately prior to the date on which the bid is opened, did as follows:
 - a. 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;
 - b. Maintained its headquarters or principal place of business in this State; this can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, the period of time the person's headquarters or principal place of business was continuously located in this state, as of the date the affidavit is signed, and stating that that address will remain the same as of the date on which the bids are to be opened;
 - c. 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;
 - d. 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. An "Authorization to Release Information" form is attached which has been prepared by the West Virginia State Tax Commissioner for this purpose. Bidders shall complete this form and mail it to the West Virginia State Tax Commissioner, Building 1, Room W-300, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0842; and

e. 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 this subsection have been satisfied.

6. A bidder who is an individual may prove that he or she continuously resided in this state during the 48 month period immediately preceding the opening of his bid by submitting with his or her bid form an affidavit signed, under penalty of perjury, certifying the period of time the individual continuously resided in this state, as of the date the affidavit is signed, stating that he or she intends to be a resident of this state on the day his or her bid is opened and true copies of any two (2) of the following documents:

a. 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;

b. Copies of Department of Motor Vehicle documents such as a Driver's License, Registration Card, or Certificate of Title of a motor vehicle indicating a West Virginia address for the bidder during those four years;

c. Certification from the Tax Commissioner that the bidder had filed West Virginia Resident Income Tax Returns for the previous four year period prior to the bid which indicated a West Virginia residence address for the bidder;

d. Copies of insurance policies on the person's primary residence, whether owned or rented, showing its location for each of the four years immediately preceding the day the person's bid is opened;

e. A letter signed by the clerk of the individual's county of residence certifying the date on which the individual registered to vote in that county and that the individual is still eligible to vote in that county and that that individual has remained eligible to vote in any election held in the 48 month period immediately preceding the opening of the bids; and if during such four year period the individual resided in two or more West Virginia counties, the separate certificates from the clerk of each county in which the individual resided will be accepted; and

f. Copies of any documents mentioned above shall be submitted with the bid form by any individual bidder who desires to be granted a Preference For Resident Bidders;

7. A bidder who believes he meets the requirements for residency must affirmatively assert his claim on the official application form to receive this preferential treatment.

**APPROVED FORMAT FOR IRREVOCABLE
LETTER OF CREDIT**

In consideration of your issuing the standby letter of credit applied for (herein called the "credit") we hereby agree as follows:

1. We agree to pay to you on demand, at your above address and in United States currency, the amount of each draft payable in United States currency and drawn under the credit, or purporting to be so drawn.
2. We agree to pay to you on demand, at your above address and in United States currency, the equivalent (at your then selling rate for cable transfers to the place where and in the currency in which such draft or instrument is payable) of the amount of each draft payable in other than United States currency and drawn under the credit, or purporting to be so drawn.
3. We agree to pay to you on demand a commission for the credit at such rate as you have quoted to us, together with the amount of any and all charges and expenses paid or incurred by you or by any of your agents or correspondents in connection with the credit. In addition to such commission and any such charges and expenses, we agree that if at any time any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority:
 - A. shall subject you to any tax, duty or other charge with respect to this agreement, or shall materially change the basis of taxation of payments to you of the principal of or interest on any amounts payable by us under this agreement (except for the imposition of or changes in respect of the rate of tax on your overall net income); or
 - B. shall impose or deem applicable or increase any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by you because of this agreement or the credit; or
 - C. shall require you to include the credit in your calculations relating to your capitalization, and if the result is to increase the cost to you of maintaining the credit, or to reduce the amount of any sum received or receivable by you under this agreement, then within 30 days after demand we agree to pay you such additional amount or amounts as will compensate you for such increased cost or reduction. Your certificate in reasonable detail setting forth the basis for the determination of such additional amount or amounts shall be conclusive evidence of such amount or amounts.
4. All amounts payable by us under paragraphs 1 and 2 of this agreement shall, if unpaid, bear interest from the date of demand; all other amounts payable by us under any provision of this agreement, except this paragraph 4, shall, if unpaid, bear interest from the date you are first entitled to demand payment thereof, regardless of whether you actually do make demand. In all cases, such indebtedness shall bear interest at an annual rate equal to the highest rate or rates of interest payable by us (for periods of time such indebtedness is outstanding) pursuant to the provisions of any promissory note issued or endorsed by us and held by you, or, for periods of time during which no such promissory note is outstanding at (check one): (13) the annual rate of (14) _____ %, (15) an annual rate that shall be (16) _____ percent in excess of the base rate in effect from time to time, and that shall change when and as the base rate changes. "Base rate" means the rate of interest established by (17) _____ from time to time as its "base" or "prime" rate. We agree to pay such interest to you, on a monthly basis and also on demand, based on a 360 day year.
5. Except to the extent we may hereafter give you contrary instructions in writing:
 - A. Your duty and that of your correspondents to examine certificates and other documents received by you or them under, or purporting to be under, the credit, shall be fully discharged if you or they exercise reasonable care to ascertain that they appear on their face to be in accordance with the terms of the credit;
 - B. Your liabilities and responsibilities and those of your correspondents shall be strictly limited in accordance with the most current revision of the Uniform Customs and Practice for Documentary Credits (1983 Revision), ICC Publication Number 400, effective October 1, 1984.
 - C. You and your correspondents may receive and accept or pay as complying with the terms of the credit any drafts, documents or statements, otherwise in order, which may be signed by the administrator, executor, trustee in bankruptcy of or receiver of any of the property of (or any similar representative or trustee for), the person in whose name the credit provides that any such drafts, documents or statements must be drawn or issued.

6. You shall assume no liability or responsibility:
- For the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents or statements;
 - For the consequences arising out of any delay and/or loss in transit of any messages, letters or documents, or the delay, mutilation or other errors arising from the transmission of cables, telegrams or telex; or
 - For consequences arising out of the interruption of your business by acts of God, riots, civil commotions, insurrections, wars or other causes beyond your control or by any strikes or walkouts.

None of the foregoing acts or things shall in any way affect or impair any of our obligations or any of your rights and powers specified in or arising under this agreement. In furtherance and extension and not in limitation of the specific provisions set forth above, we agree that any action taken or omitted by you or by your correspondents under or in connection with the credit, if taken or omitted with honesty in fact, shall be binding on us and shall not put you or your correspondents under any resulting liability to us. We further agree that we will indemnify you and your correspondents, and also your and their officers, employees and agents, and hold you and all of them harmless from and against each and every claim, demand, action, or suit which may arise against you or them by reason of any action taken or omitted (from and against each and every claim, demand, action or suit which may arise against you or them by reason of any action taken or omitted) pursuant to this agreement.

- We agree to pay to you on demand any and all expenses, including reasonable attorneys' fees and legal expenses, incurred or paid by you in protecting or collecting our indebtedness to you under this agreement or in protecting, exercising or enforcing any or all of your rights and remedies against us.
- Should any of the following events of default occur, and if at the time of any such event there remains any portion of the Credit undisbursed, we shall, upon your demand, pay to you for application to drawings under the Credit the entire amount which has not been drawn: (i) we default in respect of any payment due you under this agreement; (ii) we default in the payment of any indebtedness which we may have for the repayment of borrowed monies; (iii) we become insolvent, fail to pay our debts generally as they become due, make any assignment for the benefit of creditors, file or suffer the filing of any petition or action for relief under the provisions of the United States Bankruptcy Code or other similar laws for the relief of or relating to, debtors; (iv) there is a voluntary or involuntary appointment of a receiver, trustee, custodian or similar official to take possession of any of our property; (v) there is an attachment of any material involuntary lien of any kind to our property or assets; or (vi) any representation made in any financial statement or in any other statement or document presented to you by or on our behalf is, in any material respect, false or misleading when made. Any amount so paid which has not been drawn on the expiry date of the Credit shall be repaid to us.
- We further agree that:
 - This agreement and your rights hereunder shall continue unimpaired and shall be binding upon us notwithstanding any delay, extension of time, increase in amount, renewal, compromise or other indulgence or modification granted or agreed to by you, with or without notice to or approval by us (or any of us) in respect of the credit or any of our indebtedness to you under this agreement.
 - You shall not be deemed to have waived or released any of your rights or remedies (whether specified in or arising under this agreement or otherwise available to you by law or agreement) unless you have signed a written waiver or release. Delay or failure to act on your part shall not constitute a waiver of or otherwise preclude enforcement of any of your rights and remedies. All of your rights and remedies shall be cumulative and may be exercised singularly or concurrently. You need not resort to any particular right or remedy before exercising or enforcing any other, and your resort to any right or remedy shall not preclude the exercise or enforcement of each other's right and remedy.
 - This agreement shall be governed by the laws of the state where your main banking office is located.
 - If any provision or clause of this agreement or the application thereof to any person or circumstance is invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions, clauses or applications of this agreement which can be given effect, and this agreement shall be construed as if the invalid or illegal or unenforceable provision, clause or application has never been contained herein.

E. If the application is signed by or on behalf of several of us, this agreement shall be construed and interpreted so as to establish in all instances the joint and several obligations of each of us and this agreement shall be fully binding upon and enforceable against either, any or all of us. Each of us shall be deemed to be the agent of any others, and except as expressly provided otherwise herein, you may act at the direction or request of any one or more of us and you may give a notice or notices (whether or not required to be given), to any one or more of us, all as you may from time to time elect, without notice to or approval by the others. You may terminate this agreement with respect to, or release or discharge, any one or more of us without affecting or impairing the obligations of the rest of us. The death, incompetence or dissolution of any of us or any change in the composition of any partnership or any other firm which may be a party hereto shall not affect in any way the credit or any rights with respect to indebtedness incurred under this agreement or with respect to transactions theretofore initiated. In this agreement, the terms "we," "us" and "our" refer to any one or more applicants and correspondent banks that have executed the application, and the terms "you" and "your" refer to the bank to which such application is directed.

F. This agreement is without limitation as to duration or amount and shall be binding upon our respective heirs, legal representatives, successors and assigns and shall inure to the benefit of and be enforceable by you, your successors and assigns. You may assign or transfer this agreement and you shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all of your rights and remedies specified in or arising under this agreement with respect to any and all instruments and rights not so assigned or transferred.

G. Unless you agree otherwise, the credit shall be subject to Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication number 500 effective January 1, 1994, but all of your rights arising under said Customs and Practice shall be in addition to, and not in limitation of, your rights under this agreement.

We waive notice of your acceptance of this agreement.

Dated this (18) _____ day of (19) _____, 19__

APPLICANT

CORRESPONDENT BANK

Company or individual name

Bank name

(20) _____

(23) _____

Authorized signature

Authorized signature

(21) _____

(24) _____

Title

Title

(22) _____

(25) _____

STATE OF WEST VIRGINIA
 ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 322 70TH STREET CHARLESTON, WV 25305

APPENDIX K

TO: RITE AID OF WV 1914
 401 BUCKHANNON PIKE
 NUTTER FORT, WV

INVOICE NO. 0146-01/18/2000-0
 DATE- 01/18/2000
 PAGE- 1

DESCRIPTION	BOTTLE CODE	SIZE	FULL CASES	CHK RCV	SPLIT BOTTLES	UNIT PRICE	EXTENDED PRICE
ACQUIN APRICOT	229	.750M	1	---		74.40 CASE	74.4
EAGRAM'S VO	238	1.750L	1	---		117.06 CASE	117.0
ARTON VODKA	262	1.000L	1	---		54.00 CASE	54.0
ONTEZUMA TQ WHT	263	1.000L	4	---		72.12 CASE	288.4
MIRNOFF 80	354	.750M	1	---		78.60 CASE	78.6
MARETTO DI AMOR	421	.750M	1	---		93.35 CASE	93.3
AHLUA COFFEE	432	1.000L	1	---		205.92 CASE	205.9
EAGRAM'S VO	464	1.000L	1	---		143.40 CASE	143.4
LESSLER'S	476	.750M	1	---		68.28 CASE	68.2
BOSTON PEACH BRA	496	.750M	1	---		71.76 CASE	71.7
POPOV 80	644	1.000L	1	---		73.80 CASE	73.8
EAGRAM'S 7 CROW	696	1.000L	1	---		102.00 CASE	102.0
APTAIN MORGAN R	744	.750M	1	---		95.40 CASE	95.4
ILD TURKEY 101	844	1.000L	1	---		186.84 CASE	186.8
ARTON PEACH SCH	955	1.750L	1	---		49.56 CASE	49.5
EAGRAM'S VO	1242	.375M	1	---		120.00 CASE	120.0
LADIMIR VODKA	1247	.375M	1	---		49.44 CASE	49.4
ORD CALVERT CAN	1266	.375M	1	---		84.24 CASE	84.2
IM BEAM - GLASS	1319	.375M	1	---		101.04 CASE	101.0
ACARDI LIGHT	1607	1.000L	1	---		114.96 CASE	114.9
RISTOCRAT VODKA	1660	1.000L	1	---		54.96 CASE	54.9

OK
 1/24/2000

1/27/00

STATE OF WEST VIRGINIA
 ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 322 70TH STREET CHARLESTON, WV 25305

APPENDIX K - P2

TO: RITE AID OF WV 1914
 401 BUCKHANNON PIKE
 NUTTER FORT, WV

INVOICE NO. 0146-01/18/2000-0
 DATE- 01/18/2000
 PAGE- 2

DESCRIPTION	BOTTLE CODE	SIZE	FULL CASES	CHK RCV	SPLIT BOTTLES	UNIT PRICE	EXTENDED PRICE
ROWN ROYAL	1750	.750M	1	--		177.00 CASE	177.00
FTER SHOCK	2386	.750M	1	--		161.88 CASE	161.88
YAN'S CREAM	2406	.750M	1	--		88.20 CASE	88.20
ADIAN V&P	2420	1.000L	1	--	Returned 1/24/00	58.00 CASE	58.00
ARTON VODKA	3314	1.750L	1	--		46.50 CASE	46.50
IM BEAM	3327	1.000L	1	--		111.24 CASE	111.24
ARTON VODKA	4008	.750M	1	--		45.60 CASE	45.60
EN HIGH BOURBON	4011	1.000L	1	--		71.40 CASE	71.40
RISTOCRAT VODKA	4048	1.750L	1	--		47.46 CASE	47.46
POPOV 80	4287	.200M	1	--		78.72 CASE	78.72
ORD CALVERT CAN	4306	.200M	1	--		95.52 CASE	95.52
NCIENT AGE	4401	1.750L	1	--		78.24 CASE	78.24
ILBEY'S VODKA	4564	1.750L	1	--		58.98 CASE	58.98
APALI LICOR DE	4699	.750M	1	--		81.00 CASE	81.00
OSE CUERVO ESPE	4717	1.000L	1	--		157.36 CASE	157.36
YER'S JAMAICAN	5012	1.000L	1	--		155.40 CASE	155.40
OLDSCHLAGER	5211	.750M	1	--		155.16 CASE	155.16
IKEMAN GIN	7063	1.750L	2	--		51.24 CASE	102.48
ORDONS DRY GIN	7673	1.750L	1	--		81.06 CASE	81.06
EN HIGH BOURBON	7831	1.750L	1	--		63.96 CASE	63.96

-----SHIPPED-----

FULL CASES	SPLIT BOTTLES	ORDER AMOUNT	SPLIT CASE CHARGE	CREDIT DUE	INVOICE TOTAL
45	0	4,143.45	.00	.00	4,143.45

STATE OF WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION
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INVOICE NO. 0146-01/18/2000-0
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PAGE- 2

*** INVOICE NUMBER	INVOICE EXCEPTIONS BOTTLE CODE	CASES	*** RET APP	*** BOTTLE CODE	CLAIMS SECTION BOTTLES RETURNED	BOTTLE CODE	*** BOTTLES RETURNED
	2429	1 CASE		**			
	OK			**			
	1/24/2000			**			
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INVOICE COMMENTS DID NOT WANT ** CLAIMS COMMENTS

1914
1/20/2000

TOTALS--TRUCK _____
TOTALS--COMM _____
S. Foxson 1-20-00 X _____ X _____ X _____

TRUCK DRIVER/DATE RETAILER / DATE TRUCK DRIVER/DATE RETAILER / DATE