

1 a person may own; setting forth bidding procedures; setting
2 license fees; adding citizenship and character requirements
3 for license applicants; authorizing credit and background
4 checks on license applicants; providing a purchase option for
5 active retail licensees seeking to operate a freestanding
6 liquor retail outlet; providing for financing for the purchase
7 of a retail license for a freestanding liquor retail outlet;
8 and authorizing legislative and emergency rules.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7,
11 §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the
12 Code of West Virginia, 1931, as amended, be amended and reenacted;
13 and that said code be amended by adding thereto a new section,
14 designated §60-3A-10d, all to read as follows:

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

16 **§60-3A-2. Legislative findings and declaration; legislative**
17 **purpose.**

18 (a) The Legislature hereby finds and declares that the sale of
19 liquor at retail should no longer be by the state, but rather by
20 retail licensees; that there is a need for the state to control the
21 wholesale sales of liquor; that the health and welfare of the
22 citizens of this state will be adequately protected by the
23 licensing and control of such retail licensees; that the sale of
24 liquor through retail licensees will satisfy reasonable consumer

1 concerns of availability and price; and that the operation and
2 efficiency of state government will be improved by removing the
3 state from the retail sale of liquor and permitting sales of liquor
4 by retail licensees under licenses issued by the state together
5 with strict enforcement of laws and rules relating to the sale of
6 liquor.

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

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

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

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

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

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

24 (6) Encourage the sale of liquor in freestanding liquor retail

1 outlets that offer a wide variety of liquor at competitive prices.

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

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

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

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

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

20 (4) Many of those persons who currently hold retail licenses
21 have not only provided the services to the public contemplated by
22 this article, but in many instances have provided employment,
23 invested significant time and money into their businesses and
24 otherwise made substantial contributions to the economic and civic

1 development of the communities in which they conduct business, and
2 therefore, current retail licensees should be afforded special
3 consideration if their bids for the licenses issued for the
4 ten-year period beginning July 1, 2000, and July 1 every ten years
5 thereafter, be unsuccessful;

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

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

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

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

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

24 (3) Provide current retail licensees who, having bid in a

1 manner consistent with the provisions of this article, fail to
2 submit the highest bid for licenses issued for the ten-year period
3 beginning July 1, 2010, and for each ten-year period thereafter an
4 additional opportunity to obtain the license; and

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

7 **§60-3A-4. Definitions.**

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

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

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

23 (d) "Application" means the form prescribed by the
24 commissioner which must be filed with the commissioner by any

1 person bidding for a retail license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **§60-3A-6. General powers and duties of board and commissioner.**

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

1 (b) The commissioner shall:

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

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

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

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

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

20 (6) Set minimum standards for the display of inventory in
21 retail outlets operating pursuant to a Class A retail license which
22 shall include, without limitation, the requirement that a minimum
23 square footage of displayed inventory available for retail purchase
24 at the retail outlet be composed of liquor, beer and

1 nonintoxicating beer products and that liquor, beer and
2 nonintoxicating beer products available for sale are placed for
3 sale throughout the entire retail area of the retail outlet
4 including the retail floor space and shelving;

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

16 (8) Enforce the provisions of this article;

17 (9) Impose civil penalties upon retail licensees;

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

23 (11) Issue subpoenas and subpoenas duces tecum for the purpose
24 of conducting hearings under the provisions of section twenty-six

1 or section twenty-eight of this article, which subpoenas and
2 subpoenas duces tecum shall be issued in the time, for the fees,
3 and shall be enforced in the manner specified in section one,
4 article five, chapter twenty-nine-a of this code with like effect
5 as if such section was set forth in extenso herein.

6 (c) The board and the commissioner shall each:

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

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

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

24 **§60-3A-7. Market zones; Class A and Class B retail licenses.**

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

24 (b) When authorizing Class B retail licenses for a market

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

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

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

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

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

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

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

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

13 **§60-3A-8. Retail license application requirements; retail licensee**
14 **qualifications.**

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

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

21 (2) If the applicant is other than an individual, the name and
22 business address of the applicant; the state of its incorporation
23 or organization; the names and residence addresses of each
24 executive officer and other principal officer, partner or member of

1 the entity; a copy of the entity's charter or other agreement under
2 which the entity operates; and the names and residence addresses of
3 any person owning, directly or indirectly, at least twenty percent
4 of the outstanding stock, partnership or other interests in the
5 applicant;

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

15 (4) That the applicant is a United States citizen of good
16 moral character and, if a naturalized citizen, when and where
17 naturalized; and, if a corporation organized and authorized to do
18 business under the laws of this state, when and where incorporated,
19 with the name and address of each officer; that each officer is a
20 citizen of the United States and a person of good moral character;
21 and if a firm, association, partnership or limited partnership,
22 that each member is a citizen of the United States and, if a
23 naturalized citizen, when and where naturalized, each of whom must
24 sign the application.

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

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

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

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

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

24 (e) The commissioner shall not issue a retail license to an

1 applicant which does not hold a license issued pursuant to federal
2 law to sell liquor at wholesale.

3 **§60-3A-10. Bidding procedure.**

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

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

15 (c) Each bid shall indicate the market zone for which the
16 retail license is sought, whether the bid is for a Class A retail
17 license or Class B retail license, and, if the board has created
18 one or more designated areas for the market zone, whether the bid
19 is for a Class A or Class B retail license to be issued for any
20 designated area. No bid shall be altered or withdrawn after the
21 appointed hour for the opening of the bids. Subject to the
22 provisions of section ten-b of this article, each retail license
23 shall be awarded to the highest bidder. No bid shall be
24 considered unless the bond required under section eleven of this

1 article is submitted to the commissioner. All bids for a retail
2 license may be rejected by the board if the board determines that
3 the highest bid is inadequate, in which event the commissioner
4 shall begin anew the bidding process for that retail license.

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

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

21 (f) If the successful bidder fails to pay to the commissioner
22 the bid price and the annual retail license fee, at the time
23 specified by the commissioner, the bond provided in section eleven
24 of this article shall be forfeited and the bidder shall not be

1 issued the retail license. The commissioner shall then issue the
2 retail license to the next highest bidder for the retail license or
3 reject all bids and start anew the bidding procedure for the retail
4 license.

5 **§60-3A-10b. Bidding procedure for licenses issued for the**
6 **ten-year period beginning July 1, 2010; purchase**
7 **options for bids beginning July 1, 2010; and**
8 **licenses issued for each ten-year period**
9 **thereafter.**

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

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

24 (c) Prior to accepting bids for retail licenses to be issued

1 for the ten-year periods beginning July 1, 2010, and July 1 every
2 ten years thereafter, the board shall determine the minimum bid for
3 each retail license based upon a review of the sales at each retail
4 outlet permitted to operate under the retail license and such other
5 factors as the board may determine to generate the revenues from
6 retail license renewal projected by the Governor's official revenue
7 estimates for the fiscal year preceding the expiration of the
8 retail licenses.

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

16 (2) At least sixty days prior to accepting bids for retail
17 licenses to be issued for the ten-year period beginning July 1,
18 2010, and July 1 every ten years thereafter, the board shall
19 provide notice to each eligible retail licensee of his or her
20 option to purchase a Class A retail license or licenses as provided
21 in this subsection. The board shall include with this notice an
22 explanation of the financing option provided in section ten-d of
23 this article and a financing application form prepared by the
24 commissioner.

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

7 (4) Each eligible retail licensee who elects to pay a purchase
8 option shall, within thirty days prior to the acceptance of bids
9 for the ten-year period beginning July 1, 2010, and July 1 every
10 ten years thereafter, pay to the commissioner an amount equal to
11 ten percent over and above the minimum bid as determined by the
12 board for each Class A retail license the retail licensee wishes to
13 purchase or, if the retail licensee elects to take the financing
14 option provided in section ten-d of this article, a down payment,
15 the amount of which shall be calculated in accordance with the
16 provisions of that section. A retail licensee shall be awarded a
17 Class A retail license or licenses upon the commissioner's receipt
18 of his or her payment or down payment: *Provided*, That the
19 commissioner determines that the retail licensee is in good
20 standing with the state and meets all other requirements imposed by
21 the provisions of this article for the issuance of a Class A retail
22 license.

23 (5) A Class A retail license purchased in accordance with this
24 subsection shall be issued for the ten-year period beginning July

1 1, 2010, or July 1 every ten years thereafter, and shall expire on
2 June 30, 2020, or on June 30 every ten years thereafter.

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

8 (e) All bids for a retail license for the ten-year period
9 beginning July 1, 2010, or for any ten-year period thereafter may
10 be rejected by the board if the board determines that the highest
11 bid fails to meet the minimum bid. The board may also reject any
12 or all bids for a market zone where, in the aggregate, the bids for
13 all of the retail licenses in the market zone fail to meet the
14 minimum aggregate bid for that market zone. Where the board
15 determines the highest bid meets or exceeds the minimum bid, the
16 board shall determine whether, at the time of the bid, the same
17 retail license was held for the period ending June 30, 2010, or for
18 any ten-year period thereafter, on June 30 preceding the expiration
19 of the license. If the current retail licensee holding the same
20 retail license at the time of submission of the bid for the period
21 ending June 30, 2010, or for any ten-year period thereafter, on
22 June 30 preceding the expiration of the retail license, submitted
23 a bid that was not less than the minimum bid and is, after
24 considering any preference applicable under the provisions of

1 section ten-a of this article, an unsuccessful bidder for the
2 retail license for the period beginning July 1, 2010, or for any
3 ten-year period thereafter, on July 1 when the retail license
4 expires, the commissioner shall notify the person that upon paying
5 the amount of the highest bid, subject to the provisions of
6 subsection (f) of this section, and upon compliance with all other
7 requirements imposed by the provisions of this article for the
8 issuance of the license, the retail license for the ten-year period
9 beginning July 1, 2010, or for any ten-year period thereafter,
10 shall be issued to the current retail licensee. If, within the
11 time determined by the commissioner, the current retail licensee
12 pays the amount to the commissioner and complies with all other
13 requirements imposed by the provisions of this article for the
14 issuance of the retail license, the retail license for the ten-year
15 period beginning July 1, 2010, or for any ten-year period
16 thereafter, shall be issued to the current retail licensee.

17 (f) The board shall, in determining the amount a current
18 retail licensee who is an unsuccessful bidder shall pay as
19 described in subsection (e) of this section, afford the
20 unsuccessful bidder a preference. If the unsuccessful bidder is a
21 West Virginia resident as defined in section ten-a of this article,
22 the board shall afford the unsuccessful bidder a five percent
23 preference in addition to the five percent preference afforded
24 under section ten-a of this article. If the unsuccessful bidder is

1 not a West Virginia resident, the board shall afford the
2 unsuccessful bidder a five percent preference. The preference
3 shall be computed by subtracting the preference percentage of the
4 highest bid price from the highest bid price: *Provided*, That under
5 no circumstances may the preference bring the price of the bid
6 below the minimum bid established by the board: *Provided, however*,
7 That a current retail licensee who is not operating any of the
8 retail outlets for which he or she is authorized under the license
9 is not eligible for the preference provided for under this section.

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

14 **§60-3A-10d. Financing option for retail licensees purchasing**
15 **Class A retail licenses.**

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

24 (b) The commissioner shall prepare an application form for

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

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

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

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

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

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

20 (c) For an applicant to be considered for financing, the
21 application required under subsection (b) of this section must be
22 submitted to the commissioner with a down payment of fifty percent
23 of the total amount due under the financing agreement provided in
24 subsection (d) of this section no later than May 1, 2010, or, for

1 subsequent retail license periods, May 1 every ten years
2 thereafter. The commissioner shall make a determination as to the
3 eligibility of an applicant for financing and the issuance of a
4 Class A retail license within fifteen days of his or her receipt of
5 the application. If the commissioner determines that an applicant
6 is ineligible for financing, is not in good standing with the state
7 or does not otherwise meet the requirements of this article for the
8 issuance of a Class A retail license, the commissioner shall notify
9 the applicant that his or her application for financing is denied
10 and shall refund in full any moneys paid to the commissioner as a
11 down payment. If the applicant's application for financing is
12 denied for any reason other than the fact that the applicant is not
13 in good standing with the state or is not otherwise eligible for
14 the issuance of a Class A retail license, the commissioner shall
15 provide the applicant the option of paying the full amount of a
16 purchase option for a Class A retail license or licenses as
17 provided in subsection (d), section ten-b of this article. At the
18 request of the applicant, the commissioner may credit any moneys
19 received as a down payment towards payment of the full amount of a
20 purchase option for a Class A retail license or licenses.

21 (d) The commissioner is hereby authorized to enter into a
22 financing agreement with each retail licensee meeting the
23 requirements of this section. The financing agreement shall
24 contain such terms and conditions as prescribed by the

1 commissioner, but at a minimum shall contain the following:

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

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

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

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

1 accordance with this section; and

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

12 **§60-3A-11. Bonding requirements.**

13 Each applicant submitting a bid under section ten of this
14 article or electing to pay a purchase option for a Class A license
15 or licenses as provided in section ten-b of this article shall
16 furnish to the commissioner a bond at the time of bidding, which
17 bond shall guarantee the payment of twenty-five percent of the
18 price bid or paid for the retail license. The bond required by
19 this section shall be furnished in cash or negotiable securities or
20 shall be a surety bond issued by a surety company authorized to do
21 business with the state or an irrevocable letter of credit issued
22 by a financial institution acceptable to the commissioner. If
23 furnished in cash or negotiable securities, the principal shall be
24 deposited without restriction in the State Treasurer's office and

1 credited to the commissioner, but any income shall inure to the
2 benefit of the applicant. For applicants bidding on a retail
3 license, the bond shall be returned to an applicant following the
4 bidding if such applicant is not the successful bidder for the
5 retail license, and, if an applicant is the successful bidder, the
6 bond shall be released after issuance of the retail license.

7 **§60-3A-12. Annual retail license fee; expiration and renewal of**
8 **retail licenses.**

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

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

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

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

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