

JOINT COMMITTEE ON GOVERNMENT AND FINANCE  
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

# POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

## WV Alcohol Beverage Control Administration

Legislative Auditor: Aaron Allred  
Post Audit Division Director: Justin Robinson





GENERALLY ACCEPTED GOVERNMENT  
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

POST AUDIT DIVISION  
Justin Robinson, Director

# POST AUDIT DIVISION

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## WV Alcohol Beverage Control Administration

June 12, 2022

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### Report Background: PAGE 1

**Issue 1: PAGE 2 :** The ABCA Does Not Maintain Proper Documentation Regarding the Allocation of Rare Liquors. As a Result, the Legislative Auditor was Unable to Verify that the ABCA is Distributing Rare / Allocated Liquors in Compliance with the Agency's Spirits-102 Policy.

**Issue 2: PAGE 5 :** The Statute Governing the ABCA Administrative Fund Does Not Reflect Current Bailment Operations of the ABCA and References Outdated Operations in Establishing the Fund Limit. This Has Resulted in the Fund Balance Potentially Exceeding What is Necessary for Current ABCA Operations and Precludes Effective Governance and Management of the Fund to Ensure State Revenues are Used Efficiently.

**Informational Finding 1: PAGE 11 :** The ABCA Does Not Provide the Option to Submit and Pay for Licensing Applications and Renewals Online. Additionally, the ABCA Website Lacks Interactive Capabilities Provided by Surrounding States Which Allow for Realtime Data Regarding Spirit Availability from Retailers in the State.

**Appendix A: PAGE 15**  
Report Transmittal Letter

**Appendix B: PAGE 16**  
Objective, Scope, & Methodology

**Appendix C: PAGE 18**  
ABCA Allocated Liquor List

**Appendix D: PAGE 21**  
June 2019 Administrative Fund (#7352) Daily Balance

**Appendix E: PAGE 22**  
Monthly Administrative Fund Balance January 2021- April 2022

**Appendix F: PAGE 23**  
ABCA Response to Audit Report

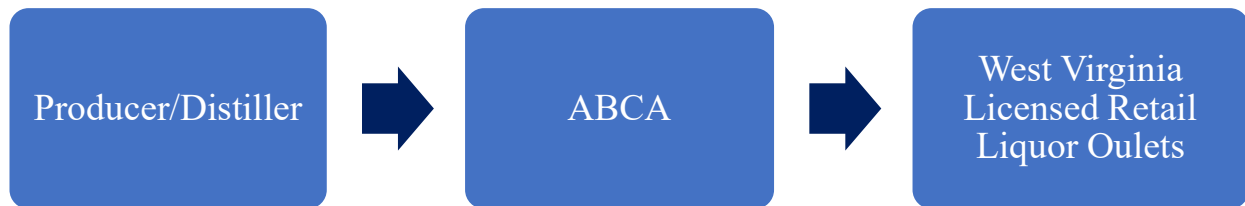
## Background

The West Virginia Alcohol Beverage Control Administration (ABCA) is the state agency tasked with regulating, enforcing, and controlling the sales, distribution, transportation, storage, and consumption of alcoholic beverages in West Virginia. According to the 2017 ABCA annual report, the agency was created in 1935 to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment, and to assure the greatest degree of personal freedom that is consistent with the health, safety, and good morals of the people of West Virginia.

With the repeal of prohibition and establishment of the ABCA, the three-tier system of distribution was established in the state. This distribution format is an effective way to regulate the three tiers of **Producer/Distiller, Wholesaler/Distributor, and Retailer**. Additionally, the 2017 annual report states, “*Laws, rules and regulations provide protection for each tier. Fairness and equality are the overriding principles by eliminating connection between the tiers.*”

Until 1990, the ABCA procured liquor products from respected distilleries and sold them in state-owned stores. Subsequent to Senate Bill 337 in 1990, the retail sale of liquor by the state was discontinued, state stores were closed, and the ABCA privatized the retail sale of liquor by placing Retail Outlet Licenses for bid. This process continues today with a re-bid of Retail Outlet Licenses on a 10-year basis, with the most recent bid taking place in 2020, generating approximately \$52.2 million dollars in revenue for the state.

Although West Virginia no longer operates state-owned retail liquor outlets, the state maintains control of the sale of distilled spirits<sup>1</sup> by functioning as the sole wholesaler/distributor and through licensing of the privately-owned retail outlets as depicted in the illustration:



Specifically, the ABCA procures spirits from a respected distillery or distributor on a bailment inventory<sup>2</sup> basis, sells the products to licensed retail liquor outlets in the state at a 32% markup, and the retail outlets, in turn, sell the spirits to private clubs, bars, restaurants, and citizens. **It is important to note that only distilled spirits are distributed by the ABCA and follow the distribution process outlined above. Wine and beer follow their own distribution processes and have separate laws which allow for private distributors.**

1 W.Va. Code §60-1-5 defines spirits as “...any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.”

2 The term bailment refers to a legal relationship between two parties in common law, where assets or property are transferred from a bailor to a bailee. In this relationship, the bailor transfers physical possession of a piece of personal property to the bailee for a certain period of time but retains ownership.

## **Issue 1: The ABCA Does Not Maintain Proper Documentation Regarding the Allocation of Rare Liquors. As a Result, the Legislative Auditor was Unable to Verify that the ABCA is Distributing Rare / Allocated Liquors in Compliance with the Agency’s Spirits-102 Policy.**

In an email from the ABCA on August 6, 2021, the agency stated it began to see increased demand in 2017 for rare liquors the agency refers to as “*allocated*” and “*highly allocated*” products. The agency defines these rare products (Appendix C), which are mostly bourbons, as the following:

**Allocated** - “*WV product that Vendors/Suppliers have set with limited release dates throughout the year and/or provides limited availability of the product but with medium to high demand from retail liquor outlets, retail-on premises licensees and the public. This product would not be available in bailment inventory on a regular basis.*”

**Highly Allocated** - “*WV product that is received by WVABCA from Vendors/Suppliers on a very temporary or seasonal basis. Often this product is only available once a year in a limited release towards the fall of the year. This product is not listed as regular product or special-order product due to the rare availability and limited allocation by Suppliers/Vendors. The product has extremely high demand from retail liquor outlets, retail on-premises licensees and the public, and the product is in very limited supply or release.*”

As indicated in the email, demand for *allocated* and *highly allocated* products generally exceeds the available supply. Therefore, for the purpose of distributing these products in a fair and equitable manner, the email details the creation of the *Spirits-102* policy. The policy establishes a distribution process for *allocated* and *highly allocated* products by forming a backorder list<sup>3</sup> of retailers requesting an *allocated* /*highly allocated* product arranged by the date the retail licensees requested such a product. Orders are filled for the retailer who first requested the product, then, the next retailer on the list order is fulfilled, and so on until either there is no more available product or, in much rarer instances, the ABCA is able to fulfill all requests for the product.

The agency added that the drafted policy had been the ABCA’s historical practice for distributing *allocated* and *highly allocated* products. However, the policy was not approved and signed by the Commissioner until July 22, 2021—nearly two weeks after the Legislative Auditor requested if the agency employed such a policy.

In order to verify the ABCA’s compliance with the *Spirits-102* policy, the Legislative Auditor developed a series of audit procedures for reviewing backorder listings and reconciling the distribution of the products to retailers. This would not only allow the Legislative Auditor to ensure the agency’s compliance with the *Spirits-102* policy, but it would also assist the Legislative Auditor in determining if all licensees in the state are being provided a fair and equitable opportunity to obtain *allocated* and *highly allocated* products.

<sup>3</sup> The ABCA definition of a backorder, according to the *Spirits-102* policy is a “WV product that is out of stock when ordered by a retail liquor outlet via phone or through the ABCA Online Order Entry Portal. When the WVABCA Warehouse receives the WV product into bailment inventory, it is then “reserved” for the retail liquor outlet based on the retail liquor outlet’s backorder date.”

Upon further correspondence with the ABCA regarding documentation essential to perform the audit procedures, the ABCA informed the Legislative Auditor that historical backorder information is unavailable for all products except for Pappy Van Winkle<sup>4</sup>. Specifically, the agency said “*a backorder list for historic sales is not available because as a case arrives in it is applied to the backorder, so that list will then show up as a sales report. When cases are fulfilled, they are no longer on a backorder list.*” In other words, the agency only maintains live, real-time data for allocated liquor backorders. Once the ABCA distributes an allocated product and removes the retailer from the backorder list, there is no available procedure to regenerate what the list was prior to the distribution. **Therefore, the Legislative Auditor was only able to analyze data maintained for Pappy Van Winkle for compliance with the distribution policy. Due to a lack of documentation, it was not possible to verify if the ABCA is distributing all other *allocated* and *highly allocated* products in compliance with the ABCA Spirits-102 policy.**

Upon reviewing the data provided by the ABCA for Pappy Van Winkle, it was identified the information was maintained in a Microsoft Excel file, with multiple sheets outlining the historic backorder lists and allocations of the various Pappy products sold by the ABCA for calendar years 2016 to 2020. The Excel file was apparently created from sales data and other original source documents not provided. Given the ABCA was unable to provide backorder lists for other allocated liquors subject to its Spirits 102 policy, it is unclear to the Legislative Auditor what information was used by the ABCA to produce the data provided for Pappy Van Winkle. **Given that this information lacked supporting documentation, it was not possible to corroborate orders were filled in the order requested by retailers as delineated by the Spirits-102 policy.**

The audit team performed an initial review of the data by comparing the backorder and allocation information within the Excel file to Pappy Van Winkle sales reports provided by the agency. Although the performance of this procedure was not useful in determining whether sales were filled in the order requested by the retailer, it did reveal inconsistencies between sales documented in the Excel file and sales recorded in ABCA’s sales web portal. Some additional issues were initially noted concerning information in the file, however the ABCA provided documentation and an explanation that these errors were due to the mislabeling of dates on certain tabs within the files. While this assertion does help clarify the information contained in the file, these discrepancies preclude auditors or other third-parties from confirming the ABCA is adhering to its Spirits-102 policy without the assistance of agency personnel. Records maintained with sufficient accurate detail allows third parties to independently confirm the ABCA is complying with its Spirits-102 policy and ensure that the procedures for the policy are adequate.

Given the information above and lack of supporting documentation, the Pappy Excel file was determined to be unreliable for audit purposes and therefore, could not be used to assess whether or not the ABCA is distributing Pappy Van Winkle in compliance with the agency’s Spirits-102 policy. Further, it is the Legislative Auditor’s opinion the ABCA is in noncompliance with W.Va. Code §5A-8-9 by not maintaining adequate historical backorder documentation for *allocated* and *highly allocated* products. W.Va. Code §5A-8-9 states, in part:

*The head of each agency shall:*

<sup>4</sup> Pappy Van Winkle is one of the most coveted bourbons in the world. According to the 2020 Pappy press release, “*The Van Winkle line has accrued an impeccable reputation among connoisseurs and has almost achieved cult-like status.*”

*(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.*

*(c) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and **essential transactions** of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.... (emphasis added)*

Substandard documentation and inadequate record keeping increases the risk of fraudulent and erroneous transactions. Additionally, a lack of adequate record keeping hinders the ability of management and external third-party entities to utilize or audit such data. In the case outlined above, the Legislative Auditor was unable to verify that the ABCA is following applicable policies and procedures regarding the distribution of *allocated* and *highly allocated* liquors and that all licensees within the state are being provided a fair and equitable opportunity to obtain rare liquors.

### **Recommendation**

1. The Legislative Auditor recommends the ABCA comply with W.Va. Code §5A-8-9 by retaining accurate and complete historic backorder data for all *allocated* and *highly allocated* products carried by the agency.



## **Issue 2: The Statute Governing the ABCA Administrative Fund Does Not Reflect Current Bailment Operations of the ABCA and References Outdated Operations in Establishing the Fund Limit. This Has Resulted in the Fund Balance Potentially Exceeding What is Necessary for Current ABCA Operations and Precludes Effective Governance and Management of the Fund to Ensure State Revenues are Used Efficiently.**

In 2017, the Post Audit Division issued a report on the ABCA's Administrative Liquor Fund<sup>5</sup> balance. The report cited the February 3, 2017, fund balance of \$18,431,526 to be in non-compliance with W.Va. Code sections §60-3-17 and §60-3-18.

W.Va. Code §60-3-17 states in part:

*...All receipts accruing to and available for the general revenue fund **in excess of the requirements of the operating fund** and the license fee and additional sales tax imposed by the provisions of this chapter **shall be remitted by the commissioner to the state treasury monthly within fifteen days next after the end of each calendar month.... (emphasis added)***

W.Va. Code §60-3-18 states in part:

*The operating fund [Administrative Liquor Fund] of the commissioner, heretofore created in the state treasury, is hereby continued and shall be a revolving fund from which all operation and administration expenses of the commissioner shall be paid. **All moneys collected by the commissioner shall be credited to the operating fund until that fund reaches an amount sufficient for the current and routine requirements of the office of the West Virginia alcohol beverage control commissioner...(emphasis added)***

Subsequent to identifying the large fund balance during the 2017 audit, the audit team inquired with then ABCA Commissioner, Ron Moats, as to the reason for the increase in the fund balance. Additionally, the audit team asked what balance would need to be maintained in the fund to ensure continual unabated operations. Commissioner Moats responded to the inquiry by stating:

*...The agency made no conscious effort to increase the balance of the Administrative Liquor Fund...[and]...the agency would require a fund balance of \$7 to \$8 million to ensure continual unabated operations....*

In consideration of the former commissioner's response, the 2017 report recommended the ABCA transfer an amount "...in excess of the required fund balance..." to the State General Revenue Fund. The ABCA complied with the recommendation by making a one-time transfer of approximately \$7 million dollars to the State General Revenue Fund.

Two years after the release of the 2017 report on the fund balance, the Post Audit Division became aware that the Administrative Fund balance had increased to a similar balance as before the 2017 report. Specifically, the balance had accumulated to an amount nearing the statutory limit

<sup>5</sup> The ABCA Administrative Liquor Fund is wvOASIS fund code #7352.

imposed by W.Va. Code §60-3-15. The statute limits the balance of the operating fund and the value of inventory stock to \$20 million. However, it appears that the language of this code section is outdated and unreflective of the current operational structure of the ABCA and its bailment inventory system. W.Va. Code §60-3-15 states, in part:

*In order to avoid the accumulation of excessive stocks in warehouses and stores, the commissioner shall so plan his purchases of alcoholic liquors for sale in state stores and agencies that none of the stock on hand be on a consignment basis and that **the amount of operating fund and the value of inventory stock shall not exceed \$20 million....(emphasis added)***

The audit team sent a letter to newly appointed ABCA Commissioner, Fred Wooton, to inquire about the high balance. Commissioner Wooton's response stated:

*...the amount of \$20 million would likely be appropriate for next 3-5 years, but perhaps after that time the \$20 million amount may need to be raised to \$25-\$30 million based on increased revenue and the price of bailment inventory paid to liquor vendors....*

*...I am not sure why or how former Commissioner Ron Moats arrived at a \$7-8 million amount for WVABCA operations, but the amount is not accurate as he communicated the amount to you....*

W.Va. Code §60-3-15 makes clear references to “purchases of alcoholic liquors” by the Commissioner, the operation of “state stores”, and that the “...amount of operating fund **and the value of inventory stock** shall not exceed \$20 million....” Currently, the ABCA sells liquors on a bailment basis and nearly all the products stored in the ABCA warehouse remain the property of the distiller until sold by the ABCA to licensed retailers.<sup>6</sup> Additionally, there are no longer state operated ABCA stores where state-owned inventories of alcoholic liquors are held. Therefore, the Commissioner makes no purchases of alcoholic liquors, and the operating fund is not reflective of any value of inventory held by the ABCA in its warehouses. It would be reasonably believed that at the time this statute was conceived the value of the state-owned inventory of alcoholic liquors purchased by the Commissioner for sale throughout the state would have made up a substantial basis for the established operational fund balance limit of \$20 million.

In addition to concerns regarding the Administrative Fund balance limit, Commissioner Wooton's July 16, 2019 letter outlined concerns with the ABCA's ability to “*promptly pay its obligations*” if the fund was required to operate at a lower amount. Primarily, the Commissioner's letter focused on the ability to make liquor payments owed to distillers once their product had been sold to a W.Va. retailer. To support these claims and visualize the fluctuations of the fund, the following figure of the May 2019 fund balance was provided by the Commissioner in the letter:

<sup>6</sup> The rare exception to the bailment procedure occurs when occasionally a case of spirits may be damaged while in the possession of the ABCA during handling and some of the bottles in the case are broken. When this occurs, the ABCA immediately purchases the entire case from the distiller and any unbroken bottles within the damaged case are stored in a section of the warehouse commonly referred to as the “bottle hospital” until this state-owned inventory is sold to retailers.

**Figure 1: Excerpt from July 16, 2019 ABCA Letter**

Here is an example for May 2019 utilizing the above calculations:

<b>Gross Cash Balance</b>	\$13,837,826.35
<u>Less Liquor Accounts Payable to Liquor Vendors</u>	<u>\$ 3,586,046.58</u>
<b>= Net Cash Balance net of Liquor Accounts Payable</b>	\$10,251,779.77
<u>Less Liquor Scheduled General Revenue Transfers</u>	<u>\$ 2,800,000.00</u>
<u>Less Private Club licensing fee General Revenue Transfers</u>	<u>\$ 667,375.00</u>
<b>= <u>Total Available (Net, Net) Cash Balance</u></b>	<b><u>\$ 6,784,404.77</u></b>

The above figure makes the assumption that all accounts payable immediately reduce the fund balance, however that balance is only reduced when the accounts payable is actually paid, which does not always occur on a single date at the beginning of each month for all accounts payable. According to ABCA, it processes payments to distillers twice each month, once on the 1<sup>st</sup> working day of the month to process payments for sales that occurred from the 16<sup>th</sup> day to the last day of the previous month, and once on the 16<sup>th</sup> day of the month for sales that occurred from the 1<sup>st</sup> day of the month to the 15<sup>th</sup> of the current month. Once paid, the fund balance is reduced by the actual amount paid and an offsetting entry is made to reduce the balance of the accounts payable. Since the ABCA operates on a bailment system, accounts payable are not recorded until bailment inventory is sold, meaning the amount owed to the distiller (the account payable) and the 32% mark-up is already collected by the ABCA from the retailer and represented in its fund balance. For every \$1 million in bailment inventory sold by the ABCA, \$1 million has been collected from the retailer due to the distiller as well as \$320,000 from the 32% mark-up as state revenue, and the ABCA records a \$1 million Accounts Payable as it now owes the distiller for the bailment inventory it sold to the retailer.

Additionally, the figure provided by the ABCA in Commissioner Wooton’s letter does not account for revenues generated in the same period. Utilizing information within wvOASIS, the Legislative Auditor was able to recreate the daily balance for the month of June 2019 by documenting all revenues, expenditures, and transfers of the fund on a daily basis. Ultimately, this review identified the example provided by the ABCA failed to account for approximately \$9.68 million of revenue in June 2019. Further, this review (Appendix D) found that the Administrative Fund’s actual daily cash balance for June 2019 never dropped below \$12.8 million, more than \$6 million more than the Total Available Cash Balance calculated by the agency in the figure above.

To further analyze the concerns expressed by the Commissioner and obtain more up to date information for the Administrative Fund, the Legislative Auditor expanded the audit procedures to review all revenues, expenditures, and substantial fund disbursements in order to document the daily fund balance from January 2021 through April 2022. The purpose of this review was to determine a reasonable daily fund balance necessary to ensure unabated operations of the ABCA and to visualize how the balance fluctuates from the beginning of the month to the end of the month. This review identified the following occurrences from January 1, 2021, to April 30, 2022:

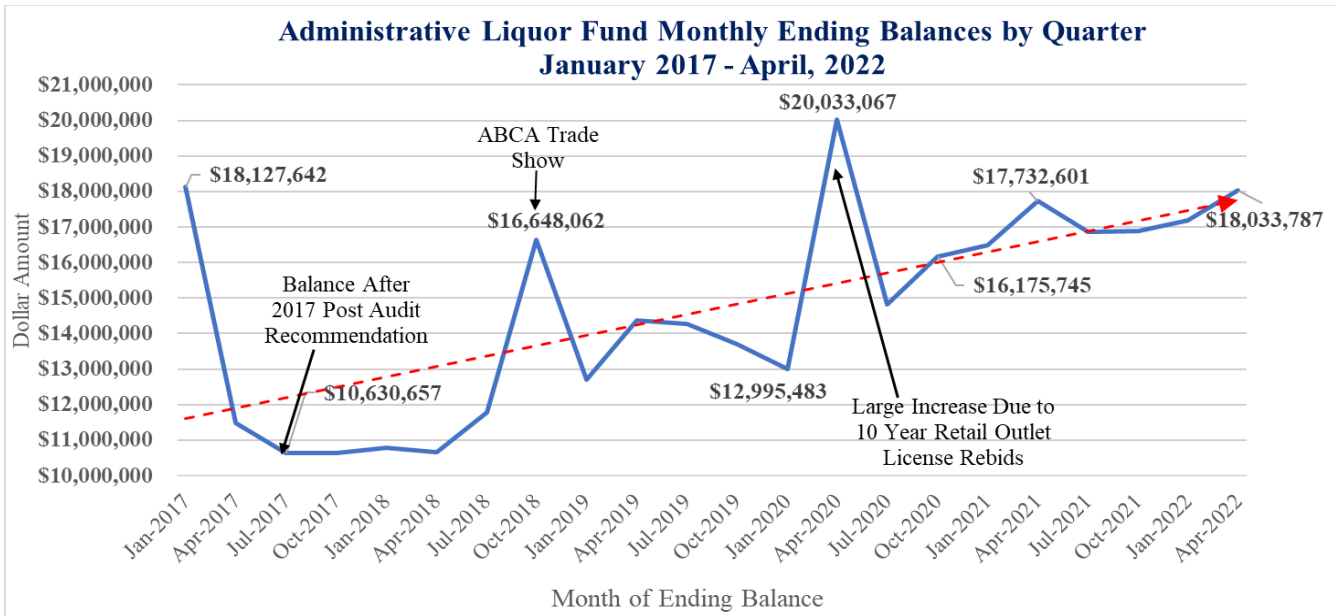
1. The Administrative Fund balance exceeded the \$20 million limit authorized by W.Va. Code §60-3-15 on at least one day in 13 of the 16 months audited;
2. The Administrative Fund balance never dropped below \$14.69 million at any time during the 16-month period; and
3. The Administrative Fund balance had an average daily balance of \$18,271,745.

In sum, the review found that the ABCA has been maintaining a fund balance in excess of what would seem to be necessary to ensure prompt payment of its obligations.

As a Special Revenue Fund, the Administrative Liquor Fund must be specifically authorized in statute to be invested with the Investment Management Board or the Board of Treasury Investments, however the statute does not grant this authorization. As with any special revenue fund that is not authorized to be invested, the balance is still invested as part of the state's participation in the BTI's Consolidated Fund. As any excess funds held in the Administrative Liquor Funds are only invested as part of the state's short-term investment pool, the state forgoes any potential opportunity to invest those excess monies held in the fund in any long-term investments. As shown in Appendix E, during the last 16 months the fund balance has never dropped below \$14.69 million. Meaning, approximately 74% of the allowable fund balance has remained unused for the 16 months recorded by the Legislative Auditor, of which any potentially excess funds could have been transferred to the General Revenue Fund for other purposes.

The Legislative Auditor believes the Legislature should consult with the ABCA regarding its fund balance limit and determine what an appropriate limit would be based on the current bailment operations and require the ABCA to substantiate its requested fund balance limit considering the analysis conducted in this audit report. Since the ABCA incurs an account payable after the sale of liquor to licensed state retailers and collects the amount due to the distiller with the associated 32% mark-up, any fund balance limit should contemplate these accounts payable against the fund balance limit to ensure funds are available and those distillers can be promptly paid. Additionally, other factors should be considered regarding obligations of the ABCA which may be tied to the Administrative Fund in establishing a fund balance limit to ensure efficient unabated operations. However, as shown in the graph that follows, the balance of this fund has seen growth over recent years. While not shown on the graph as an ending month balance, the balance as of June 7, 2022, was approximately \$20.6 million<sup>7</sup>.

<sup>7</sup> The current balance as of June 7, 2022, is comprised of receipts from the sale of liquor, transfers due to the general revenue fund, and payments owed to distillers and is not an ending month balance net of those monies due to be transferred or paid to distillers currently held in the fund.



Based on this report it appears the current fund balance may be in excess of what is required which may be due in part to the antiquated language found in the governing statute establishing its limit.

As mentioned previously, the current governing statute which was last amended in 1977 defines the fund balance limit with multiple references to operations that are not reflective of the current bailment operations of the ABCA. However, while not reflective of current bailment operations, the statute does contemplate the operations of the ABCA at that time in establishing a limit for the amount of the operating fund and the value of state-owned inventory held in state stores and warehouses throughout the state to \$20 million.

If it is the intent of the Legislature to continue to limit this fund based on the operational funding needs of the ABCA and the desire to maximize the use of revenues derived from the 32% mark-up on the sale of liquor in the state, amending this statute with the consultation of the ABCA would be the best course of action. As a result, it is the Legislative Auditor’s opinion the Legislature should amend W.Va. Code §60-3-15 to remove the outdated language and establish a limit for the Administrative Fund that is reflective of the ABCA’s current bailment operations and its current operational funding needs while contemplating accounts payable and other obligations that may also be associated with those funds in establishing this limit.

In response to Commissioner Wooton’s assertion that the fund balance would need to be increased, based on current available information and the work performed in this audit the Legislative Auditor believes this increase to be unnecessary. Specifically, Commissioner Wooton stated that an increase in the fund balance limit to \$25-\$30 million would need to occur based on *“increased revenue and the price of bailment inventory paid to liquor vendors.”* Given that revenues are directly correlated to the statutory markup of liquors by the ABCA, it is the Legislative Auditor’s belief that any increase in product cost by the distiller would essentially increase the amount of excess funds in the Administrative Fund as all distilled spirits are sold at a 32% markup. When these increases are projected across all products carried by the ABCA, it is reasonable to assume the ABCA Administrative Fund balance would increase accordingly.

However, it is the Legislative Auditor's opinion that, rather than raising the fund balance limit and accumulating the increase in revenues in the Administrative Fund, these excess funds should be transferred to the state General Revenue Fund where the state would have an opportunity to make other use of those funds.

In conclusion, it is the Legislative Auditor's opinion that the ABCA has been in non-compliance with W.Va. Code §60-3-15 multiple times by exceeding the \$20 million limit stipulated by code, and that the outdated language of this statute does not provide for the effective management of the fund limit. Additionally, the Legislative Auditor believes the current fund balance may be in excess of what is necessary for unabated operations based on the growth of the fund balance in recent years, assessing this fund balance to have remained above \$14 million for the last 16 months, and the former ABCA Commissioner's assertion in 2017 that a fund balance of \$7-8 million would be sufficient for unabated operations just five years earlier. As a result, the Legislative Auditor recommends the following:

**Recommendations**

1. The Legislative Auditor recommends the Legislature amend W.Va. Code §60-3-15 to remove the outdated language and establish a limit for the Administrative Fund that is reflective of the ABCA's current bailment operations and its current operational funding needs while contemplating accounts payable and other obligations associated with those funds in establishing this limit. Based on this established fund balance limit the ABCA should transfer any excess funds held in the Administrative Fund to the State General Revenue Fund.

## **Informational Finding 1: The ABCA Does Not Provide the Option to Submit and Pay for Licensing Applications and Renewals Online. Additionally, the ABCA Website Lacks Interactive Capabilities Provided by Surrounding States Which Allow for Realtime Data Regarding Spirit Availability from Retailers in the State.**

One of the objectives developed by the Legislative Auditor was to determine if the ABCA's procedures for processing and issuing licenses are efficient, effective, and performed in accordance with W.Va. Code and applicable policies. As a result, the Legislative Auditor formulated a review of the licensing process from start to finish for a sample of licenses. This test would provide the Legislative Auditor with an in-depth look at how license applications are received, reviewed, processed, and issued, while also identifying any deficiencies in the process by answering questions surrounding five main topics for each sampled license. The questions developed for the review were as follows:

1. How long did the application take to process?
2. Was a background check performed?
3. What was the amount of the application fee paid and the payment type?
4. Was a bond provided? If so, what was the total amount of bonds?
5. Was good standing verified with other state agencies? (Secretary of State, Workforce, Tax Dept).

Overall, the review found the licensing process to be effective and materially in conformity with W.Va. Code and Legislative Rule with little to no exceptions to the questions above. However, it was identified that the processing for 23 of 112 (21%) sampled licenses were delayed due to missing information, incomplete applications, wrong payment amounts, or other errors made by the applicant. It is unclear whether these delays stem from indistinct instructions on application forms, applicant errors, or some combination of both.

Regardless of the cause, it is the Legislative Auditor's opinion an online application system could possibly alleviate some of the delays resulting from paper applications that are mailed. For instance, online application software could reduce transit times for documents and payments mailed to ABCA offices. The software also could calculate application fees due for licenses selected by an applicant and even pro-rate them based on the date of the application, essentially eliminating the confusion involved with determining application payment amounts by the licensee. This issue could also be addressed by accepting credit card payments through the software. Currently, the ABCA only accepts money orders, verified checks, and cashiers checks. When checks are received for an incorrect amount and are an overpayment, it is the ABCA's practice to return the check to the applicant. This not only increases the time necessary to process the application but is inconvenient for all parties involved.

It should be noted, the ABCA previously implemented an online licensing system; however, the agency has since discontinued the practice citing the following reasons:

*“...First, Licensees found the uploading of documents very cumbersome. Second, some licensees were unable to perform document uploads. Third, there was very low participation from licensees, with the system. Lastly, licensees did not like the convenience fee that was an additional charge when using a credit card. Therefore, the WVABCA did not find the implementation of the system to be a prudent choice for our licensees to make submissions.”*

While the audit team recognizes the merit to this statement, the team questions why the agency could not offer the option for online submissions, while maintaining the option to mail in hardcopies for licensees. This would not only benefit the licensees preferring to submit applications online but, could also reduce the personnel hours required by the ABCA to process applications and renewals. Many regulatory entities across the country including in West Virginia offer online tools to serve its customers. The increased use of online access to conduct business by agencies like the Division of Motor Vehicles has greatly improved the efficiency and effectiveness of those operations and increased public access, and it is likely similar outcomes could be achieved should the ABCA provide similar online tools to those it serves.

While the option of online licensing is not required by law, several surrounding states have implemented such processes. For instance, both Kentucky and Tennessee offer complete online licensing services, while Ohio and Virginia currently provide online license renewals. Virginia plans to expand their online renewal service and offer complete online licensing in 2022.

#### **Other ABCA Website Improvements Could Potentially Be Explored to Offer More Real-Time Data for Spirit Availability.**

In addition to online licensing capabilities, it was identified Ohio, Virginia, and Pennsylvania offer near real-time data on liquor availability throughout the state. However, Virginia and Pennsylvania operate state-owned stores and thus may be afforded certain logistical benefits in obtaining inventory information and in implementing the technology necessary to obtain such data. Therefore, in order to employ a more equivalent benchmark to the ABCA’s processes, the audit team related the capabilities of the ABCA website to those capabilities of the Ohio Liquor website (OHLQ.com) since Ohio, like West Virginia, utilizes private liquor retailers. This is not a wholly apples to apples comparison, as Ohio utilizes a public-private partnership to operate the OHLQ website with the Ohio Department of Commerce, the Division of Liquor Control, and JobsOhio Beverage System which is a division of the state’s private economic development corporation JobsOhio.

Upon first review of the OHLQ website, it is apparent how the OHLQ website increases accessibility for citizens to available products within the state. The “About” page briefly details the OHLQ site and how Ohio puts consumers first by striving to continuously provide the best customer experience possible. The webpage cites it has accomplished this by implementing Near



Real-Time Data inventory tracking in more than 50% of OHLQ [Ohio retail stores]. The site states “Near Real-Time Data (NRTD) tracking sends store inventory updates to OHLQ.com every 15 minutes to provide the most accurate reflection of inventory levels possible.”

In addition to providing Near Real-Time Data, the website simplifies finding products by allowing users the option to search for products in three ways:

1. The OHLQ webpage offers a “Liquor” drop down menu where a user can select from brandy, gin, rum, tequila, vodka, whiskey, or cordial liquors such as Triple Sec and coffee liqueurs. Once a type of liquor is selected by the user, the website offers a number of ways to further sort and browse the list of products. For instance, whiskeys can be sorted by American, bourbon, rye, Canadian, or Irish; tequilas can be sorted by anejo, blanco, or reposado; and rum can be sorted by dark, spiced, or white. The website also allows for users to browse for narrower categories of products by sorting any liquor type by products new to Ohio, products produced in Ohio, or products which are on “last call” and will no longer be carried in the state.
2. The next option the OHLQ site provides for searching for products is by location. By clicking the “Location” drop down on the homepage, users can input their address, view stores in close proximity, and select a retailer of their choosing. Once an OHLQ retailer has been selected, a user may sort and search liquors available at the location by all the parameters outlined in #1 above.
3. Lastly, the OHLQ site provides the option for a user to browse liquor products through a catalog of recipes. By clicking the “Recipes” drop down on the OHLQ home page, the user can browse through suggested recipes by liquor type, flavor profile, difficulty level, or drink type (i.e. dessert, frozen, tropical, or low sugar). Once a recipe has been selected, in addition to all ingredients required and directions to make the cocktail, the OHLQ site recommends different brands of liquor for the recipe depending on what is required for the drink. Essentially, a user can find a recipe they like, select a recommended liquor for the drink, and find if the product is available at a retailer near them with only a series of clicks.

Comparing the benefits outlined above to similar functions of the ABCA website shows that the ABCA website could offer more interactivity, which in turn could promote sales. The ABCA does currently provide a “Liquor Search” function which allows a user to search for a specific type of liquor. However, the ABCA liquor search function is much more limited. Once a liquor has been searched by a user, the website generates a list of retail licensees where the product “may” be available. In addition to the list of retailer’s names, the site provides the address and phone number for the potential retailers. However, no information is provided as to when the retailer may have received the product or if the product is currently in stock. Additionally, many of the W.Va. *allocated* and *highly allocated* products return “No results found” when searched.

It is readily apparent the interactive capabilities available from the OHLQ site are far superior to those offered by the ABCA website. The OHLQ website modernizes and simplifies the process involved with finding distilled spirits while also improving the accessibility of rare liquors

to all citizens. Further, as Near Real-Time Data (NRTD) capability is implemented in more OHLQ stores throughout Ohio, accessibility to distilled spirits and overall customer experience will continue to improve. According to the OHLQ site, the Ohio Department of Commerce is in the process of installing NRTD in all OHLQ stores during 2022. Given the information above, the Legislative Auditor makes the following recommendations.

### **Recommendations**

1. The Legislative Auditor recommends the ABCA consider the viability of offering online licensing for both new applicants and license renewals as well as providing the option to accept online payments from licensees as necessary.
2. The Legislative Auditor recommends the ABCA investigate the feasibility of upgrading the functionality of the ABCA's website to provide more access to licensees and the public to conduct business with the ABCA and licensed retailers throughout the state. This could include real-time data regarding the availability of liquor stock in the state's retail establishments for the public and more access for licensees to conduct business with the ABCA to determine renewal dates, licensing fees, etc..

### **Conclusion**

In conclusion, the Legislative Auditor commends the ABCA for furthering the availability of distilled spirits in the state, adequately ensuring the proper licensing of applicants, and continuing the evolution of alcohol related business in West Virginia. Reviews of both the licensing division and the distribution of rare liquors identified that these areas of the ABCA are operating within the limits of both W.Va. Code and Legislative Rules. However, as the report cites, there are areas where the ABCA can continue to improve processes to further benefit citizens and liquor licensees.

Specifically, it is the Legislative Auditor's opinion better documentation and record keeping regarding the distribution of *allocated* and *highly allocated* liquors would allow the agency and outside entities the ability to verify these products are being distributed in a fair and equitable manner. Additionally, effective use of excess monies in the Administrative Liquor Fund could be transferred to the State General Revenue Fund to maximize revenues for the state and increase funds available for appropriation to other areas of state government. Lastly, modernization of the ABCA website with technology utilized by surrounding states could further increase citizens' and licensees' accessibility to distilled spirits and improve customer's experience when utilizing ABCA services. This, in turn, could enhance the state's revenues generated by the ABCA.

It should be noted, this report will be followed by one other subsequent report covering the enforcement operations of the ABCA. Currently, this review is still in the field work stage; however, the Legislative Auditor anticipates the release of that report sometime in the fall.

## Appendix A

### WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

*Post Audit Division*

1900 Kanawha Blvd. East, Room W-329  
Charleston, WV 25305-0610  
(304) 347-4880



Justin Robinson  
Director

June 2, 2022

Fredric L. Wooton, Commissioner  
WV Alcohol Beverage Control Administration  
900 Pennsylvania Ave., 4<sup>th</sup> Floor  
Charleston, WV 25302

Dear Commissioner Wooton:

This is to transmit a draft copy of the Post Audit Division's report on the West Virginia Alcohol Beverage Control Administration (ABCA). This report is scheduled to be presented to the Post Audits Subcommittee during the upcoming June interim meetings. A date and time for this meeting has not been set, however the interim meetings are currently scheduled for June 12-14, 2022. Once a time and date are set, we will contact you and provide that information. We recommend that a representative from ABCA be present at the meeting to respond to the report and answer any questions committee members may have during or after the meeting.

If you wish to have an exit conference to discuss this draft report prior to its release, please contact Terri Stowers at (304) 347-4880 to schedule a meeting for a time and date that would occur prior to June 10, 2022. In addition, if you wish to provide a written response to be included in the final report, we ask that this be provided to us by Noon on Friday, June 10, 2022 so that it may be incorporated into the report prior to publication. If you have any questions or concerns, please feel free to contact me. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Justin Robinson".

Justin Robinson

## **Appendix B**

### **Objective, Scope, and Methodology**

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

#### **Objective**

The objectives of this review were:

1. To determine if the ABCA's policies and procedures for remitting payments to distillers for the sale of liquor are efficient and operating in compliance with applicable laws, rules, or regulations,
2. To determine if the ABCA's policies and procedures for processing and issuing licenses are efficient, effective, and are performed in accordance with applicable policies,
3. To determine if the ABCA's distribution procedures for processing liquor orders from retailers are efficient and effective, and
4. To follow-up on prior audit issues identified and recommendations made in past audits performed by the Legislative Auditor.

It should be noted that upon performing field work pertaining to Objective 1, the Legislative Auditor met with the State Auditor's Office (SAO) to discuss documentation submitted by the ABCA when requesting payments to distillers. During the meeting, the SAO informed the Legislative Auditor documentation previously provided by the ABCA did not meet SAO standards. However, the SAO added the ABCA has since developed a new document that meets all requirements established by the SAO which the ABCA now provides upon requesting payments to distillers. As the SAO is the administering agency regarding support for payment requests, the Legislative Auditor deemed the issue as resolved and no further work was performed. Therefore, the issues outlined in this report will be derived from Objectives 2, 3, and 4.

#### **Scope**

The scope of this audit consisted of a review of all documents pertaining to the objectives above, as well as all applicable W.Va. Code, Legislative Rules, and best business practices. Also included were reviews of samples of alcohol license applications and sales data for multiple products carried by the ABCA. The timeframe of these reviews spanned from fiscal years 2017-2021.

#### **Methodology**

Post Audit staff gathered and analyzed several sources of information and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through meetings with the ABCA and correspondence via email with department heads. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective

agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence. Audit staff analyzed various source documents that were provided to us by the ABCA, were retrieved from wvOASIS, or were publicly available on the web.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### 2021 Allocated/Limited/Very Limited

Blanton's  
Eagle Rare  
Buffalo Trace  
Buffalo Trace Bourbon Cream  
EH Taylor Jr Single Barrel  
EH Taylor Four Grain  
EH Taylor Small Batch  
EH Taylor Straight Rye  
EH Taylor Amaranth  
EH Taylor 18yr Marriage  
EH Taylor JR Barrel Proof  
EH Taylor Warehouse C  
Old Forester Birthday Bourbon  
Pappy Van Winkle 10  
Pappy Van Winkle 12  
Pappy Van Winkle 15  
Pappy Van Winkle 20  
Thomas Handy Sazerac Rye  
Stagg JR  
George T Stagg  
Booker's  
Yamazaki 12YR  
Basil Hayden's 10yr  
1792 Small Batch  
WhistlePig BossHog  
WhistlePig Double Malt Rye 18yr  
Eagle Rare 17YR  
Four Roses Single Barrel  
Four Roses Small Batch  
Four Roses 2020 Limited  
Sazerac Rye 6YR  
Weller 107  
Weller Special Reserve  
William Larue Weller KSBW  
Weller Full Proof  
Weller Single Barrel  
Weller C.Y.P.B  
Benchmark old Number Eight  
Woodford Reserve Kentucky Derby  
Baker's Bourbon  
Barton Very Old Bourbon  
Auchentoshan Three Wood  
Old Forester Mint Julep

Rock Hill Farm  
Pikesville Rye 110  
Elijah Craig 18YR  
Bowmore 18  
Minor Case Straight Rye  
Crown Royal Salted Caramel  
Crown Royal Peach  
Henry McKenna Single Barrel  
Yamazaki 18YR  
Talisker Limited  
Lagavulin Distillers  
Oban Distillers Edition  
Bowman Brothers Straight Bourbon Small Batch  
Old Medley 12YR  
High West Bouryne Whiskey  
Maker's Mark Mint Julep  
Smooth Ambler Old Scout  
Wild Turkey Masters Keep Cornerstone  
Russel's Reserve 2002  
1792 Sweet Wheat  
1792 Full Proof  
Parker's Heritage  
Maker's Mark Private Select  
Yellowstone Limited Edition 2020  
Elmer T Lee  
Bib & Tucker Single Barrel  
Creek Water Whiskey  
Rhetoric 25YR  
Woodford Master's Collection  
Booker 30<sup>th</sup>  
Glenmorangie Allta  
Old Forester Rye  
Old Fitzgerald 9YR  
Old Fitzgerald 13YR  
Mister Sam Tribute Whiskey  
Basil Hayden Caribbean Rye  
Baker 13 YR  
Larceny Barrel Proof  
Knob Creek 15YR  
Basil Hayden's 10YR Rye  
Jack Daniel's Single Barrel Eric Church  
Little Book Chapter 4  
Old Fitzgerald 14YR BIB Decanter  
Daviess County KSBW

Daviess County Cab Finish  
Daviess County French Oak Finish  
Legent  
JP Wiser's 23YR  
LP Wiser's 35YR  
Gran Patron Smoky Tequila  
Belle Meade Bourbon  
Belle Meade Bourbon Reserve  
Jack Daniel's Rye Barrel Proof Special Release  
Wild Turkey Kentucky Spirit Private Barrel  
Elijah Craig Barrel Proof  
Jack Daniel's Legacy Edition  
O.F.C Vintages  
Old Charter  
Eagle Rare 17YR  
Thomas H. Handy  
Little Book Chapters  
Thomas Handy Sazerac Rye  
Orphan Barrel Series (current series Copper Tongue)  
Basil Hayden's Caribbean Rye  
Bardstown Discovery Series  
Bardstown Fusion Series  
Bardstown Prisoner Series  
Kentucky Owl Confiscated  
\*New listings July 2021  
\*Parker's Heritage 15<sup>th</sup> Edition Heavy Char Wheat Whiskey  
\*Old Fitzgerald 11 Year Bourbon  
\*Russell's Reserve 13 Year  
\*Wild Turkey Master's Keep One



## Appendix D

June 2019 Administrative Fund Daily Balance (Fund #7352)										
	Sun	Mon	Tues	Wed	Thur	Fri	Saturday			
Daily Beg. Balance										1
Daily Net Revenue										
Daily Net Expenditures										
General Revenue Fund Transfers										
Daily Ending Balance										
Daily Beg. Balance	2	3	4	5	6	7	8			
Daily Net Revenue		\$ 13,837,826	\$ 13,728,969	\$ 14,154,033	\$ 14,266,327	\$ 14,778,168	\$ 14,778,168			
Daily Net Expenditures		\$ -	\$ -	\$ -	\$ -	\$ -	\$ (141,526)			
General Revenue Fund Transfers		\$ 558,558	\$ 425,154	\$ 121,606	\$ 121,606	\$ 511,917	\$ 443,052			
Daily Ending Balance		\$ (667,375)	\$ -	\$ (90)	\$ (9,312)	\$ (76)	\$ (7,998)			
Daily Beg. Balance	9	10	11	12	13	14	15			
Daily Net Revenue		\$ 13,728,969	\$ 14,154,033	\$ 14,266,327	\$ 14,778,168	\$ 15,071,697				
Daily Net Expenditures		\$ 15,071,697	\$ 14,320,389	\$ 14,811,415	\$ 15,875,937	\$ 16,116,906				
General Revenue Fund Transfers		\$ 471,321	\$ 491,026	\$ 1,064,798	\$ 258,017	\$ 479,554				
Daily Ending Balance		\$ (1,222,629)	\$ -	\$ (275)	\$ (17,048)	\$ (2,651,430)				
Daily Beg. Balance	16	17	18	19	20	21	22			
Daily Net Revenue		\$ 14,320,389	\$ 14,811,415	\$ 15,875,937	\$ 16,116,906	\$ 13,945,030				
Daily Net Expenditures		\$ 13,945,030	\$ 14,539,359	\$ 15,147,386	\$ 15,690,046	\$ 15,690,046	\$ 15,690,046			
General Revenue Fund Transfers		\$ 606,893	\$ 609,299	\$ 546,057	\$ -	\$ 339,871				
Daily Ending Balance		\$ (12,565)	\$ (1,272)	\$ (3,396)	\$ -	\$ (3,989)				
Daily Beg. Balance	23	24	25	26	27	28	29			
Daily Net Revenue		\$ 14,539,359	\$ 15,147,386	\$ 15,690,046	\$ 15,690,046	\$ 16,025,928				
Daily Net Expenditures		\$ 16,025,928	\$ 16,680,196	\$ 14,359,358	\$ 13,525,766	\$ 13,935,271	\$ 13,935,271			
General Revenue Fund Transfers		\$ 673,446	\$ 479,335	\$ 658,521	\$ 430,075	\$ 509,318				
Daily Ending Balance		\$ (19,179)	\$ (173)	\$ (1,492,113)	\$ (20,570)	\$ (1,595,420)				
<b>Sum of Data Above</b>										
	June Monthly High	\$ 16,680,196	Monthly Transfers to Gen. Revenue Fund	\$ (3,467,375)						
	June Monthly Low	\$ 12,849,169	Largest Expenditures for a Day	\$ (2,651,430)						
	June Average Daily Balance	\$ 14,775,570	Monthly Total Revenue	\$ 9,677,817						
			Monthly Total Expenditures	\$ (7,199,099)						
			Monthly Total Expenditures & Transfers	\$ (10,666,474)						

## Appendix E

<b>Monthly Administrative Fund Balance January 2021 - April 2022</b>						
<b>Month</b>	<b>Accounting Period</b>	<b>Beginning Balance</b>	<b>Ending Balance</b>	<b>Average Daily Balance</b>	<b>Monthly High Balance</b>	<b>Monthly Low Balance</b>
Jan-21	7	\$ 18,084,726	\$ 16,487,377	\$ 18,840,036	\$ 20,653,814	\$ 16,487,377
Feb-21	8	\$ 16,487,377	\$ 17,058,935	\$ 18,956,716	\$ 20,787,381	\$ 17,058,109
Mar-21	9	\$ 17,058,935	\$ 17,493,112	\$ 18,337,343	\$ 20,207,208	\$ 15,525,980
Apr-21	10	\$ 17,493,112	\$ 17,732,601	\$ 18,853,857	\$ 21,119,324	\$ 17,732,601
May-21	11	\$ 17,732,601	\$ 16,396,658	\$ 18,575,074	\$ 21,251,675	\$ 16,396,658
Jun-21	12	\$ 16,396,658	\$ 17,380,484	\$ 18,997,522	\$ 20,967,839	\$ 17,053,843
Jul-21	1*	\$ 17,342,080	\$ 16,854,935	\$ 18,231,805	\$ 20,730,118	\$ 16,854,935
Aug-21	2	\$ 16,854,935	\$ 17,008,394	\$ 16,930,509	\$ 18,787,120	\$ 14,697,262
Sep-21	3	\$ 17,008,394	\$ 21,851,156	\$ 17,717,253	\$ 21,851,156	\$ 14,737,902
Oct-21	4	\$ 21,851,156	\$ 16,891,533	\$ 19,606,050	\$ 23,841,922	\$ 16,879,701
Nov-21	5	\$ 16,891,533	\$ 17,155,804	\$ 17,102,732	\$ 18,700,502	\$ 15,500,937
Dec-21	6	\$ 17,155,804	\$ 18,752,802	\$ 17,822,508	\$ 20,077,347	\$ 16,296,349
Jan-22	7	\$ 18,752,802	\$ 17,200,377	\$ 18,921,860	\$ 20,628,875	\$ 16,659,705
Feb-22	8	\$ 17,200,377	\$ 16,450,378	\$ 17,364,778	\$ 19,248,813	\$ 15,096,419
Mar-22	9	\$ 16,450,378	\$ 18,202,046	\$ 17,658,012	\$ 20,722,850	\$ 15,600,347
Apr-22	10	\$ 18,202,046	\$ 18,033,787	\$ 18,431,871	\$ 20,166,506	\$ 16,612,393
Total Months Recorded:					16	
Average of all Monthly Balances:					\$ 18,271,745	
Months with a daily balance over \$20 million limit:					13	
Lowest Balance:					\$ 14,697,262	
<p>* The July 2021 Beginning Balance differs from the June 2021 Ending Balance due to transactions that were paid in July but attributable to expenses incurred in June during the prior fiscal year, representing the "13th month" transactions.</p>						



**WEST VIRGINIA**  
**ALCOHOL BEVERAGE CONTROL ADMINISTRATION**  
FREDRIC L. WOOTON, COMMISSIONER

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June 10, 2022

Via Email

Justin Robinson, Director  
WV Legislative Auditor's Office  
1900 Kanawha Boulevard, East, Room W-329  
Charleston, WV 25305-0610  
Email: [justin.robinson@wvlegislature.gov](mailto:justin.robinson@wvlegislature.gov)

Dear Director Robinson:

The WVABCA received your final report on June 9, 2022, from the initial entrance conference date of January 28, 2020. With Covid-19, I believe we would both acknowledge that added to the timeline of the legislative audit.

Upon review of the Post Audit Report, the WVABCA would agree with your comments except as noted herein:

With respect to Issue 1: The WVABCA contends it does maintain computerized records showing current back orders and once the backorders are fulfilled, then the backorder becomes a sale and part of the sales history for a product. Generally, other than Pappy Van Winkle (and some other rare brands or limited releases), allocated and highly allocated product backorders are fulfilled within a one-year time frame. Since approximately the end of 2016 (prior to 2016 there was not a great demand for the product), a backorder list was generated and maintained over multiple years for Pappy Van Winkle. The WVABCA acknowledges that these practices were formalized into a policy, the Spirits-102 policy. The WVABCA acknowledges that from an audit perspective that an auditor, having no institutional knowledge, would need to see the backorder list prior to a sales allocation, and also after the allocation in order to verify the transactions in an audit. This issue was not raised until the 2022 Legislative Audit.

Going forward, the WVABCA commits to maintaining manual print screens for highly allocated and allocated products showing backorders before and after a sales allocation, making adjustments to its computer systems (which may take some time), and possibly adjusting its Spirits-102 policy to better reflect the difference between products that are allocated during a one-year time frame versus a multi-year time frame. The WVABCA feels that this would comply with W. Va. Code §5A-8-9 and provide reliable audit information for highly allocated and allocated products.

With respect to Issue 2:

The WVABCA agrees with the recommendation that W. Va. Code §60-3-15 is outdated, does not accurately reflect the WVABCA's operations, and the code section should be amended. The code section is in the article of the code dealing with state stores and even says "none of the stock on hand be on a consignment basis", which essentially is the bailment process, and speaks to having a "state brand" for liquors. The WVABCA would add there are other sections of Article 3 of the code that need amended for example W. Va. Code §60-3-20, which only contemplates the sale of alcoholic liquors "for cash, money order, certified check, cashier's check or traveler's check only. In the case of private clubs as defined in article seven of this chapter, letters of credit from banks guaranteeing payment of checks may be filed with the commissioner. Filing of such letters may permit the commissioner to accept the club's check." Obviously, retail outlets and private clubs accept credit cards.

Additionally, the Administrative Liquor Fund essentially contains the WVABCA's budget (salaries, benefits, insurance, office equipment, utilities, software and etc.), liquor purchases from retail outlets (monies owed to liquor manufactures/vendors and monies to pay for delivery fees), private club licensing fees, retail liquor outlet license fees, other liquor license fees and other fees, rebid payments and deferred payment option financing payments. The monies in the Administrative Liquor Fund are used to operate the WVABCA and its warehouse, pay manufacturers and vendors for their liquor products, pay employees and so forth.

Not included in the Legislative Auditor's Post Audit Report is an accounting of the volume of case purchases being made by retail liquor outlets. In FY 2017, the WVABCA sold to retail outlets 690,493 cases of liquor, in FY 2018 WVABCA sold to retail outlets 702,438 cases of liquor, in FY 2019 WVABCA sold to retail outlets 731,033 cases, in FY 2020 the WVABCA sold to retail outlets 816,957 cases, and in FY 2021 WVABCA sold to retail outlets 870,183 cases. Generally, when you sell more cases of liquor you are generating more gross sales. In FY 2017, gross sales for the year was \$93,242,922.33 and FY 2021, gross sales for the years \$127,990,564.48. Thus, the Administrative Liquor Fund would reflect increases in revenue on a monthly basis with greater funds transferred to manufactures/vendors and also to General Revenue Fund. The WVABCA works with the WV State Budget Office to transfer funds to general revenue on a regularly scheduled transfer and excess revenue is transferred in consultation with the Budget Office towards the end of the fiscal year. As noted by the Legislative Auditor, the good news is that liquor sales have been increasing due to variety and availability of liquor products.

As previously noted, the WVABCA works with the WV State Budget Office and the WV Department of Revenue to set up a monthly transfer schedule at the beginning of each fiscal year. At the end of June FY 2022, the WVABCA will have transferred \$28,200,000 in liquor revenues for FY 2022. On the first working day of each month, the WVABCA transfers the Private Club License Fee revenues collected from the previous month per W. Va. Code §60-7-6, this amount can vary based on the time year and where the agency is at in the renewal process. (See attached excel spreadsheet – Exhibit A). The WVABCA concedes that the Administrative Liquor Fund's daily balance fluctuates as money is received from retail outlet purchases and various fees, and also as money is paid out to manufacturers/vendors and transferred to general revenue. There are timing issues for the funds in the Administrative Liquor Fund when dealing with the WV State Treasurer, the WV State Auditor, and the WVABCA's processing of receipts and payments.

Additionally, the WVABCA's budget has noncurrent liabilities due to accrued annual leave, net pension liability and net OPEB (Other Post-Employment Benefits) and deferred inflows of resources from OPEB and pension. The WVABCA needs to have assets to cover these liabilities for Financial Statement purposes. The pension liabilities, OPEB liabilities and deferred inflows are due to following the GASB Statements No. 68 Accounting and Financial Reports for Pensions and GASB Statement No. 75 Accounting and Financial Reporting for Postemployment Benefits Other than Pensions. The changes in these amounts are in part determined by information provided by the WV Public Employees Retirement System (PERS) annually for the change in the net pension liability and by the WV Retiree Health Benefit Trust (RHBT) annually for the change in the net OPEB liability. (See attached excel spreadsheet – Exhibit B).

Lastly, the WVABCA's statutes have never authorized the investment of the funds in the Administrative Liquor Fund. The likely intent was for the Administrative Liquor Fund to be an operating account with monies being regularly deposited and paid out. The WVABCA in conversations with the WV Board of Treasury Investments understands that the funds in the Administrative Liquor Fund are invested in the state participant pool on a daily basis which is the state's short term investment pool, Thus, there is a small return on the funds in the Administrative Liquor Fund. If the Legislature would want to authorize long term investment of liquor revenues, the WVABCA would suggest a separate investment account be created that would not interfere with the Administrative Liquor Fund's daily receipts and payments.

With respect to Informational Finding 1:

The WVABCA is willing to consider and possibly, once again, offer an online licensing option in addition to the mail-in license application process. The WVABCA recognizes that there have been advancements in licensing software and online capabilities since the WVABCA previously offered the online licensing services. The WVABCA would need to find a viable software system that would allow applicants easier document scanning and uploading. As noted in the report, applicant document uploading was a major issue with the original online option. Currently, most license applications are on the WVABCA website as a pdf-fillable option. However, many applicants still opt to print the applications out and fill them out by hand and mail the applications to the WVABCA.

The WVABCA will also reassess implementing the use of payment by credit card in addition to payment by money order, cashier's check, and certified checks. Although, in the past very few applicants made use of pay by credit card, due to the additional convenience fee of 2.25% on top of the licensing fee.

Example:

- One Private Club application (less than a 1,000 members) for 2022 -2023 license year would be  $\$816.67 + \$100 = \$916.67$  with convenience fee  $\$937.30$ .
- Three Private Club applications (less than a 1,000 members) for 2022 -2023 license year would be  $\$2,450.01 + \$300.00 = \$2,750.00$  with convenience fee  $\$2,811.87$ .

Secondly, the WVABCA is willing to look at the feasibility of adding greater functionality to the WVABCA website. The WVABCA is currently required to use WV Interactive (via the WV Office of Technology) as its website host and for website services. Note, that West Virginia has had privately owned stores since 1990 that since 2010 have operated as freestanding liquor retail outlets and mixed retail liquor outlets. However, due to the private retail outlets it is unlikely that the WVABCA will have real-time data as compared with Ohio. Ohio essentially pays private vendors a 6% fee on liquor sales to operate state store, subject to Ohio's mandated requirements. The WVABCA agrees that Ohio's web capabilities are not comparable as Ohio spends millions of dollars on its web presence and likely has 40 people working at 3 separate firms to manage its online presence.

Again, I generally view your report as a positive assessment of the WVABCA.

Sincerely,



Fredric L. Wooton  
Commissioner

**WVABCA Administrative Fund Calculation - Exhibit A**

Gross Cash Balance 5/31/2022	\$ 18,830,847.58
Less Liquor Accounts Payable to liquor vendors 5/16/2022 through 5/31/2022	\$ 4,781,874.84 *
=Net Cash Balance new of Liquor Accounts Payable	<u>\$ 14,048,972.74</u>
Less Liquor Scheduled General Revenue Transfers for June 2022	\$ 4,200,000.00
Less Private Club licensing fee General Revenue Transfer (May 2022 Revenues)	\$ 430,292.89 **
Total Available (Net, Net) Cash Balance	<u><u>\$ 9,418,679.85</u></u>

\* These liquor payments will be processed starting on June 1, 2022. They required approved with the WV State Auditor's Office.

\*\*This transfer was made on June 1, 2022.

**WVABCA Noncurrent Liabilities and Deferred Inflows of Resources for the Administrative Fund - Exhibit B**

Fiscal Year	2021	2020	2019
<b>Noncurrent Liabilities</b>			
Accrued Annual Leave	\$ 286,288	\$ 282,218	\$ 269,007
Net Pension Liability	\$ 939,824	\$ 382,826	\$ 437,754
Net OPEB Liability	\$ 322,469	\$ 1,327,389	\$ 1,702,570
Total Noncurrent liabilities	<u>\$ 1,548,581</u>	<u>\$ 1,992,433</u>	<u>\$ 2,409,331</u>
Deferred Inflows of resources from OPEB and Pension	\$ 1,207,345	\$ 898,321	\$ 770,617



**POST AUDITS SUBCOMMITTEE  
MEMBERS**

**SENATE MEMBERS**  
*President, Craig Blair*  
Mark Maynard  
Stephen Baldwin

**HOUSE MEMBERS**  
*Roger Hanshaw, Speaker*  
Brandon Steele  
Chad Lovejoy



JOINT COMMITTEE ON GOVERNMENT AND FINANCE  
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR  
- POST AUDIT DIVISION -

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