

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 3105

BY DELEGATES ESPINOSA, C. MARTIN AND NELSON

[Originating in the Committee on Government

Organization, February 22, 2019.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §60-2-17a; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code;
3 to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said
4 code; to amend said code by adding thereto two new sections, designated §60-7-6a and
5 §60-7-8a; and to amend and reenact §61-8-27 of said code, all relating to permitting the
6 Alcohol Beverage Control Administration to request the assistance of law enforcement;
7 clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West
8 Virginia licensees can only sell liquor by the drink; clarifying certain licensing requirements
9 for licensure; clarifying prohibition on liquor bottle sales in Class A licenses; providing
10 guidance on certain lawful conduct such as wine bottle sales and frozen drink machines;
11 creating a private fair and festival license; definitions; license requirements; license fee;
12 creating the private hotel license and license fee; creating a private nine-hole golf course
13 license and fee; definitions; license requirements; license fee; permitting a private resort
14 hotel to have inner-connection with a resident brewer who has a brewpub; providing a 30-
15 day requirement to issue or deny a completed license application; creating a reactivation
16 fee for licensees who fail to timely file their renewal application and pay their annual license
17 fees; permitting a license privilege for certain licensees to operate a connected but
18 separately operated Class A on-premises license and a Class B off-premises license;
19 clarifying that certain state licensed gaming is permissible in a private club; and permitting
20 minors to attend a private nine-hole golf course and a private fair or festival under certain
21 conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-17a. Request law-enforcement assistance.

1 The West Virginia Alcohol Beverage Control Commissioner may request the West Virginia
2 State Police to assist the commissioner pursuant to §15-2-12(i) of this code, and the West Virginia
3 Alcohol Beverage Control Commissioner may further request, in writing, the assistance of sheriffs,
4 deputy sheriffs, and municipal police officers in the coordination and enforcement of §11-16-1 et
5 seq., of this code and chapter 60 of this code, and further such assistance shall not be withheld.
6 Such state police officers, sheriffs, deputy sheriffs, and municipal police officers who are assisting
7 the West Virginia Alcohol Beverage Control Commissioner, and its agents, with the civil and
8 administrative enforcement of the code, may further act upon crimes committed in their presence.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

1 A person shall not:

2 (1) Manufacture or sell in this state without a license any alcoholic liquor, except as
3 permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as
5 permitted by this article;

6 (3) Sell or tender without a license any alcoholic liquor other than permitted by this article;

7 (4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude,
8 unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

9 (5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has
10 been sold at retail in this state;

11 (6) Advertise any alcoholic liquor in this state except in accordance with the rules and
12 regulations of the commissioner; or

13 (7) Distribute, deal in, process, or use crowns, stamps or seals required under the authority
14 of this chapter, except in accordance with the rules and regulations prescribed by the
15 commissioner; or

16 (8) Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship,

17 use or in any other manner provide or furnish powdered alcohol.

18 A person who violates any provision of this section shall be guilty of a misdemeanor and,
19 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less
20 than 30 days nor more than one year or both such fine and imprisonment, for the first offense.
21 Upon conviction of a second or subsequent offense, the court may in its discretion impose a
22 penalty of confinement in the penitentiary for a period not to exceed three years. A person who
23 violates any provision of this section for the second or any subsequent offense under this section,
24 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correction facility
25 for a period not to exceed three years.

26 An indictment for any first violation of subdivisions (1), (2) and (3) of this section, or any of
27 them, shall be sufficient if in form or effect as follows:

28 State of West Virginia

29 County of, to wit:

30 The Grand Jurors of the State of West Virginia, in and for the body of the County of,
31 upon their oaths present that, on the day of, ~~19~~ 20...., in the said County of
32, did unlawfully, without a State license and without authorization under the Alcohol
33 Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a
34 quantity of alcoholic liquor, against the peace and dignity of the state.

35 Any indictment under this section shall otherwise be in conformity with §62-9-1 *et seq.* of
36 this code.

§60-6-8. Unlawful sale or possession by licensee.

1 A licensed person shall not:

2 (1) Sell, furnish, tender or serve alcoholic liquors of a kind other than that which such
3 license or this chapter authorizes him or her to sell;

4 (2) Sell, furnish, tender or serve beer to which wine, spirits, or alcohol has been added;

5 (3) Sell, furnish, tender or serve wine to which other alcoholic spirits have been added,

6 otherwise than as required in the manufacture thereof under regulations of the commission;

7 (4) Sell, furnish, tender or serve alcoholic liquors to a person specified in §60-3-22 of this
8 chapter;

9 (5) Sell, furnish, tender or serve alcoholic liquors except as authorized by his or her
10 license, such as, Class A licensees licensed by §60-7-1 et seq., and §60-8-1 et seq. of this code
11 for on premises consumption shall only sell or serve alcoholic liquors by the drink poured by the
12 licensee directly from the original container at the time of ordering and service of the drink, and
13 no original container or bottle sales are permitted, except for Class A licensees licensed by §60-
14 7-1 et seq., and §60-8-1 et seq. of this code who may, when selling or serving only wine
15 accompanied with freshly prepared food or meals in excess of \$15, permit wine bottle service at
16 a dining table comprised of two or more patrons, ages 21 years of age or older, consuming such
17 meal with the table served wine bottle;

18 (6) Sell, furnish, tender or serve pre-mixed alcoholic liquors that are not in the original
19 container, except for alcohol liquors poured from the original container and used in frozen drink
20 mixing machines that are mixed with a non-alcoholic mixer, ice, and the alcoholic liquors, provided
21 that such machines are emptied of the mixed alcoholic liquors and sanitized daily with any unused
22 mixed alcoholic liquors being disposed of, by the end of operations, the same day (the Licensee
23 shall maintain records of the daily sanitization).

24 ~~(6)~~ (7) Sell, furnish, tender or serve any alcoholic liquor when forbidden by the provisions
25 of this chapter;

26 ~~(7)~~ (8) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered
27 alcohol; or,

28 ~~(8)~~ (9) Keep on the premises covered by his or her license alcoholic liquor other than that
29 which he or she is authorized to sell, furnish, tender or serve by such license or by this chapter.

30 A person who violates any provision of this section shall be guilty of a misdemeanor and,
31 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less

32 than 30 days nor more than one year, or both such fine and imprisonment for the first offense.
33 Upon conviction of a second or subsequent offense, the court may in its discretion impose a
34 penalty of confinement in ~~the penitentiary~~ a state correction facility for a period not to exceed three
35 years. A person who violates any provision of this section for the second or any subsequent
36 offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned
37 in a state correction facility for a period not to exceed three years.

**§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor;
arrests by sheriffs or their deputies for violation in their presence; penalties.**

1 (a) A person may not:

2 (1) Appear in a public place in an intoxicated condition;

3 (2) Drink alcoholic liquor in a public place;

4 (3) Tender a drink of alcoholic liquor to another person in a public place, which such tender
5 in a public place shall include any person providing cups, glasses, ice, refrigeration, storage of
6 alcoholic liquors, any food or snacks, a lounge area or space for patrons to gather, any type of
7 musical entertainment, any type of exotic dancing or other such nude entertainment, or any such
8 similar activity to another person who is possessing or consuming alcoholic liquors in a business
9 not licensed pursuant to this chapter, especially in what is referred to as a “bring your own bottle”,
10 “bring your own booze”, or “BYOB” type business, where tendering a drink in this public place is
11 unlawful as set forth in this chapter and Article VI, §46 of the Constitution of the State of West
12 Virginia;

13 (4) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not
14 bearing stamps or seals of the commissioner, without having first obtained written authority from
15 the commissioner therefor; or

16 (5) Possess any alcoholic liquor which was manufactured or acquired in violation of the
17 provisions of this chapter.

18 (b) Any law-enforcement officer may arrest without a warrant and take the following

19 actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of
20 this section: (1) If there is some nonintoxicated person who will accept responsibility for the
21 intoxicated person, the officer may issue the intoxicated person a citation specifying a date for
22 appearance before a judicial officer and release him or her to the custody of the individual
23 accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever
24 feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance
25 of the a citation, transport the individual to the individual's present residence or arrange for the
26 transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1)
27 and (2) of this subsection are not possible, the officer shall transport or arrange for transportation
28 to the appropriate judicial officer as defined by §27-11-17 of this code; or (4) if the individual is
29 incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention,
30 that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency
31 room. The officer shall accompany the individual until he or she is discharged from the emergency
32 room or admitted to the hospital. If the individual is released from the emergency room, the officer
33 may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is
34 admitted to the hospital, the officer shall issue a citation to the individual specifying a date for
35 appearance before a judicial officer.

36 (c) Upon presentment before the proper judicial officer, the law-enforcement officer serves
37 as the chief complaining witness. The judicial officer shall determine if there is probative evidence
38 that the individual may be guilty of the charge of public intoxication. If such evidence is not
39 presented, the charge shall be dismissed and the individual released. If sufficient evidence is
40 presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the
41 individual. Once a warrant or summons has been issued, the following actions may be taken:

42 (1) If the individual is no longer incapacitated, he or she may be released;

43 (2) If the individual is still incapacitated but a nonintoxicated person is available to accept
44 responsibility for him or her, he or she may be released to the responsible person; or

45 (3) If the individual is still incapacitated and no responsible person is available, the judicial
46 officer shall proceed under §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this code.

47 (d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until
48 complaint may be made before a judicial officer and a warrant or summons issued, any person
49 who in the presence of the law-enforcement officer violates any one or more of subdivisions (1)
50 through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use
51 reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying
52 out the provisions of this section.

53 (e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a
54 misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance
55 with the following options:

56 (1) Upon first offense, a fine of not less than \$5 nor more than \$100. If the individual, prior
57 to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours
58 duration at the nearest community mental health — mental retardation center, the judicial officer
59 may delay sentencing until the program is completed and upon completion may dismiss the
60 charges;

61 (2) Upon conviction for a second offense, a fine of not less than \$5 nor more than \$100
62 and not more than 60 days in jail or completion of not less than five hours of alcoholism counseling
63 at the nearest community mental health — mental retardation center;

64 (3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100
65 and not less than five nor more than 60 days in jail or a fine of not less than \$5 nor more than
66 \$100 and completion of not less than five hours of alcoholism counseling at the nearest
67 community mental health — mental retardation center: *Provided*, That three convictions for public
68 intoxication within the preceding six months is considered evidence of alcoholism. For the
69 educational counseling programs described in this subsection the community mental health —
70 mental retardation center may charge each participant its usual and customary fee and shall

71 certify in writing to the referring judicial officer the completion or failure to complete the prescribed
72 program for each individual.

73 (f) A person charged with a violation of subdivision (1), subsection (a) of this section who
74 is an alcoholic shall be found not guilty by reason of addiction and proper disposition made
75 pursuant to §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this code.

76 (g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a
77 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100;
78 and upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more
79 than \$100, or confined in jail not more than 60 days, or both.

80 (h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a
81 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100,
82 or confined in jail not more than 60 days, or both.

83 (i) Any person who violates subdivision (4) or (5), subsection (a) of this section is guilty of
84 a misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor more
85 than \$500; and upon conviction of second or subsequent offense, he or she is guilty of a felony
86 and, shall be confined in a state correctional facility for a period of not less than one year nor more
87 than three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; power to lease building for establishment of private club.

1 Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (a) "Applicant" means a private club applying for a license under the provisions of this
4 article.

5 (b) "Code" means the official code of West Virginia, 1931, as amended.

6 (c) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

7 (d) "Licensee" means the holder of a license to operate a private club granted under this

8 article, which license shall remain unexpired, unsuspended and unrevoked.

9 (e) "Private club" means any corporation or unincorporated association which either: (1)
10 Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is
11 operated exclusively for the benefit of its members, which pays no part of its income to its
12 shareholders or individual members, which owns or leases a building or other premises to which
13 club are admitted only duly elected or approved dues-paying members in good standing of the
14 corporation or association and their quests while in the company of a member and to which club
15 the general public is not admitted, and which club maintains in the building or on the premises a
16 suitable kitchen and dining facility with related equipment for serving food to members and their
17 quests; or (2) is a nonprofit social club, which is operated exclusively for the benefit of its
18 members, which pays no part of its income to its shareholders or individual members, which owns
19 or leases a building or other premises to which club are admitted only duly elected or approved
20 dues-paying members in good standing of the corporation or association and their quests while
21 in the company of a member and to which club the general public is not admitted, and which club
22 maintains in the building or on the premises a suitable kitchen and dining facility with related
23 equipment for serving food to members and their quests; or (3) is organized and operated for
24 legitimate purposes which has at least 100 duly elected or approved dues-paying members in
25 good standing, which owns or leases a building or other premises, including any vessel licensed
26 or approved by any federal agency to carry or accommodate passengers on navigable waters of
27 this state, to which club are admitted only duly elected or approved dues-paying members in good
28 standing of the corporation or association and their guests while in the company of a member and
29 to which club the general public is not admitted, and which club maintains in the building or on
30 the premises a suitable kitchen and dining facility with related equipment and employs a sufficient
31 number of persons for serving meals to members and their guests; or (4) is organized for
32 legitimate purposes and owns or leases a building or other delimited premises in any state, county
33 or municipal park or at any airport, in which building or premises a club has been established, to

34 which club are admitted only duly elected and approved dues-paying members in good standing
35 and their quests while in the company of a member and to which club the general public is not
36 admitted, and which maintains in connection with the club a suitable kitchen and dining facility
37 and related equipment and employs a sufficient number of persons for serving meals in the club
38 to the members and their quests.

39 (f) "Private fair and festival" means an applicant for a private club or a licensed private club
40 meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth
41 in this subsection which:

42 (1) Has at least 100 members;

43 (2) Has been sponsored, endorsed or approved, in writing, by the governing body (or its
44 duly elected or appointed officers) of either the municipality or of the county wherein the festival,
45 fair, or other event is to be conducted;

46 (3) Shall prepare, provide, or engage a food caterer to provide adequate freshly prepared
47 food or meals to serve its stated members and guests who will be attending the temporary festival,
48 fair or other event, and further shall provide any documentation or agreements of such to the
49 commissioner prior to approval;

50 (4) Shall not use third party entities or individuals to purchase, sell, furnish, or serve
51 alcoholic liquors (liquor and wine), nonintoxicating beer, or nonintoxicating craft beer;

52 (5) Shall provide adequate restroom facilities, whether permanent or portable, to serve the
53 stated members and guests who will be attending the festival, fair, or other event;

54 (6) Shall provide a floorplan for the proposed premises with a defined and bounded area
55 to safely account for the ingress and egress of stated members and guests who will be attending
56 the festival, fair, or other event; and

57 (7) Utilizes an age verification system approved by the commissioner.

58 (g) "Private hotel" means an applicant for a private club or licensed private club licensee
59 meeting the criteria set forth in this subsection which:

60 (1) Has at least 2,000 members;

61 (2) Offers short-term, daily-rate accommodations or lodging for members and their guests
62 amounting to at least 30 separate bedrooms, and also offer a conference center with significant
63 facility square footage for meetings;

64 (3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers,
65 and other kitchen utensils and apparatus as determined by the commissioner on the licensed
66 premises and serves freshly prepared food at least 20 hours per week;

67 (4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared
68 in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not
69 include microwavable, frozen, or canned foods;

70 (5) Owns or leases, controls, operates, and uses acreage amounting to more than 1 acre
71 but less than 2 acres, which are contiguous acres of bounded or fenced real property which would
72 be listed on the licensees' floorplan and would be used for hotel and conference center events
73 and large contracted for group-type events such as weddings, reunions, conferences, meetings,
74 and sporting or recreational events;

75 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining
76 buildings and structures on the private hotel's floorplan which would comprise the licensed
77 premises, which would be authorized for the lawful sales, service and consumption of alcoholic
78 liquors throughout the licensed premises whether these activities were conducted in a building or
79 structure or outdoors while on the private hotel's licensed premises and as noted on the private
80 hotel's floorplan;

81 (7) Has an identified person or persons or entity that has right, title and ownership or lease
82 interest in the real property buildings and structures located on the proposed licensed premises;
83 and,

84 (8) Utilizes an age verification system approved by the commissioner.

85 ~~(g)~~ (h) "Private resort hotel" means an applicant for a private club or licensed private club

86 licensee meeting the criteria set forth in this subsection which:

87 (1) Has at least 5,000 members;

88 (2) Offers short-term daily-rate accommodations or lodging for members and their guests
89 amounting to at least 50 separate bedrooms;

90 (3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers
91 and other kitchen utensils and apparatus as determined by the commissioner on the licensed
92 premises and serves freshly prepared food at least 25 hours per week;

93 (4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared
94 in the private resort hotel's full kitchen, and in calculating the food inventory the commissioner
95 may not include microwavable, frozen or canned foods;

96 (5) Owns or leases, controls, operates and uses acreage amounting to at least 10
97 contiguous acres of bounded or fenced real property which would be listed on the licensees'
98 floorplan and would be used for destination, resort and large contracted for group-type events
99 such as weddings, reunions, conferences, meetings and sporting or recreational events;

100 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining
101 buildings and structures on the private resort hotel's floorplan which would comprise the licensed
102 premises, which would be authorized for the lawful sales, service and consumption of alcoholic
103 liquors throughout the licensed premises whether these activities were conducted in a building or
104 structure or outdoors while on the private resort hotel's licensed premises and as noted on the
105 private resort hotel's floorplan;

106 (7) Has an identified person or persons or entity that has right, title and ownership or lease
107 interest in the real property buildings and structures located on the proposed licensed premises;

108 ~~and~~

109 (8) Utilizes an age verification system approved by the commissioner; and,

110 (9) May have a separately licensed resident brewer with a brewpub license inner-
111 connected via a walkway, doorway or entryway, all as determined and approved by the

112 commissioner, for limited access during permitted hours of operation for tours and complimentary
113 samples at the resident brewery.

114 ~~(g)~~ (i) "Private golf club" means an applicant for a private club or licensed private club
115 licensee meeting the criteria set forth in this subsection which:

116 (1) Has at least ~~one thousand~~ 100 members;

117 (2) Maintains at least one 18 hole golf course with separate and distinct golf playing holes,
118 not reusing nine golf playing holes to comprise the 18 golf playing holes, a clubhouse, and offers
119 golf carts, whether electric or gasoline;

120 (3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner,
121 on the licensed premises and serves freshly prepared food at least 15 hours per week;

122 (4) Owns or leases, controls, operates and uses acreage amounting to at least 80
123 contiguous acres of bounded or fenced real property which would be listed on the private golf
124 club's floorplan and could be used for golfing events and large contracted for group-type events
125 such as weddings, reunions, conferences, meetings and sporting or recreational events;

126 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining
127 buildings and structures on the private golf club's floorplan which would comprise the licensed
128 premises, which would be authorized for the lawful sales, service and consumption of alcoholic
129 liquors throughout the licensed premises whether these activities were conducted, in a building
130 or structure or outdoors while on the private golf club's licensed premises and as noted on the
131 private golf club's floorplan;

132 (6) Has an identified person or persons or entity that has right, title and ownership interest
133 in the real property buildings and structures located on the proposed licensed premises; and

134 (7) Utilizes an age verification system approved by the commissioner.

135 (j) "Private 9-hole golf course" means an applicant for a private club or licensed private
136 club licensee meeting the criteria set forth in this subsection which:

137 (1) Has at least 50 members;

138 (2) Maintains at least one 9-hole golf course with separate and distinct golf playing holes
139 and offers golf carts, whether electric or gasoline;

140 (3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner,
141 on the licensed premises and serves freshly prepared food at least 15 hours per week;

142 (4) Owns or leases, controls, operates and uses acreage amounting to at least 30
143 contiguous acres of bounded or fenced real property which would be listed on the private 9-hole
144 golf course's floorplan and could be used for golfing events and large contracted for group-type
145 events such as weddings, reunions, conferences, meetings and sporting or recreational events;

146 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining
147 buildings and structures on the private 9-hole golf course's floorplan which would comprise the
148 licensed premises, which would be authorized for the lawful sales, service and consumption of
149 alcoholic liquors throughout the licensed premises whether these activities were conducted, in a
150 building or structure or outdoors while on the private 9-hole golf course's licensed premises and
151 as noted on the private 9-hole golf course's floorplan;

152 (6) Has an identified person or persons or entity that has right, title and ownership interest
153 in the real property buildings and structures located on the proposed licensed premises; and

154 (7) Utilizes an age verification system approved by the commissioner.

155 (k) The Department of Natural Resources, the authority governing any county or municipal
156 park, or any county commission, municipality, other governmental entity, public corporation or
157 public authority operating any park or airport may lease as lessor a building or portion thereof or
158 other limited premises in any such park or airport to any corporation or unincorporated association
159 for the establishment of a private club pursuant to this article.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

1 Notwithstanding any other provisions of this code to the contrary, licensees are hereby
2 authorized to sell, tender and serve alcoholic liquors by the drink, other than in sealed packages,
3 which includes no bottle or original container sales of alcoholic liquors to patrons, for consumption

4 on the premises of the licensees, to their members and their guests in accordance with the
5 provisions of this article, the regulations and as authorized in §60-6-8 of this code. The licensees
6 may keep and maintain on their premises a supply of those properly acquired alcoholic liquors in
7 such quantities as may be appropriate for the conduct of operations thereof.

**§60-7-4. Application for license; information required; verification; application to be
accompanied by fees; bond; college fraternities and sororities ineligible for license;
racial discrimination by applicants prohibited.**

1 (a) Application for a license to operate a private club shall be made on such form as may
2 be prescribed by the commissioner and shall include:

3 (1) The name of the applicant;

4 (2) If the applicant is an unincorporated association, the names and addresses of the
5 members of its governing board;

6 (3) If the applicant is a corporation, the names and addresses of its officers and directors;

7 (4) The place at which the applicant will conduct its operations and whether the same is
8 owned or leased by the applicant;

9 (5) The number of members of the applicant;

10 (6) The name or names of any national organizations with which applicant is affiliated and
11 the nature of such affiliation;

12 (7) The size and nature of the dining and kitchen facilities operated by applicant; and

13 (8) Such other information as the commissioner may reasonably require which shall
14 include, but not be limited to the criminal records, if any, of each member of the applicant's
15 governing board and/or its officers and directors who have been convicted of a felony or a crime
16 involving moral turpitude, and the true ownership information of the applicant and whether the
17 applicant has made any false statements, has made any material misrepresentations, involves
18 hidden ownership, or involves persons with an undisclosed pecuniary interest.

19 (b) The application shall be verified by each member of the governing board of the

20 applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers
21 and all members of its board of directors. The application shall be accompanied by the license
22 fee hereinafter prescribed and by a bond of the applicant in the penal sum of \$5,000 with a
23 corporate surety authorized to transact business in the State of West Virginia, payable to the State
24 of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed
25 and on the faithful performance of and compliance with the provisions of this article.

26 (c) Under no circumstance may any college fraternity or sorority be issued a license to
27 operate a private club.

28 (d) No license to operate a private club will be issued to applicants who discriminate
29 against any person or group of persons because of race or color of such person or group of
30 persons.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

1 (a) Upon receipt of ~~the~~ a completed application referred to in §60-7-4 of this code, together
2 with the accompanying fee and bond, the commissioner shall conduct an investigation to
3 determine the accuracy of the matters contained in such completed application and whether
4 applicant is a bona fide private club of good reputation in the community in which it shall operate.
5 For the purpose of conducting such investigation, the commissioner may withhold the granting or
6 refusal to grant such license for a period not to exceed 30 days or until the applicant has
7 completed the conditions set forth in §60-7-4(a) of this code and this article, all as determined by
8 the commissioner. If it shall appear that such applicant is a bona fide private club, of good
9 reputation in the community in which it shall operate and that there is no false statement, no
10 material misrepresentations, no hidden ownership, no persons with an undisclosed pecuniary
11 interest contained in such application along with no other omissions or failures by the applicant to
12 complete the application, all as determined by the commissioner, the commissioner shall issue a

13 license authorizing the applicant to sell alcoholic liquors as provided in §60-7-3 of this code, and
14 otherwise shall refuse to issue such license, except that in the case of an application by a
15 corporation or association to operate a private club in connection with:

16 (1) A state park, the Director of the Department of Natural Resources must grant his or
17 her approval before the license can be issued; or

18 (2) A county or municipal park, or an airport, the authority governing the park or airport
19 must grant its approval before the license can be issued.

20 A license may not be issued for a private club in any state park unless a dining facility
21 comparable to the dining facility for the proposed private club will be available to serve meals to
22 the general public. A license may not be issued for a private club in any county or municipal park,
23 or an airport, unless a dining facility comparable to the dining facility for the proposed private club
24 will be available to serve meals to the general public.

25 (b) Upon refusal to issue such license the commissioner shall make and enter an order
26 denying such application, which denial and refusal shall be final unless a hearing is requested in
27 accordance with the provisions of §60-7-13 of this code. When such refusal or denial becomes
28 final the commissioner shall forthwith refund to the applicant his or her fees and bond
29 accompanying the application.

30 (c) Such license shall be of such form and design as the commissioner may prescribe by
31 reasonable rule or regulation, and shall authorize the licensee to sell alcoholic liquors at only one
32 location.

33 (d) Such license shall expire on June 30 next following the date of issue and may be
34 renewed upon the same showing as required for the issuance of the initial license, together with
35 the payment of fees and filing of the bond as required by this article.

36 (e) A license issued under the provisions of this article may not be transferable.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

1 (a) The annual license fee for a license issued under the provisions of this article to a

2 fraternal or veterans' organization or a nonprofit social club shall be \$750.

3 (b) The annual license fee for a license issued under the provisions of this article to a
4 private club other than a private club of the type specified in subsection (a) of this section shall be
5 \$1,000 if the private club has less than 1000 members, \$2,000 if the private club is a private 9-
6 hole golf course as defined in §60-7-2 of this code; \$2,500 if the private club has 1000 or more
7 members, \$4,000 if the private club is a private hotel with 3 or fewer designated areas or a private
8 golf club as defined in §60-7-2 of this code, and further, if the private club is a private resort hotel
9 as defined in §60-7-2 of this code, said private resort hotel may designate areas within the
10 licensed premises for the lawful sale, service and consumption of alcoholic liquors as provided
11 for by this article. The annual license fee for a private resort hotel with five or fewer designated
12 areas shall be \$7,500, and the annual license fee for a private resort hotel with at least six but no
13 more than 10 designated areas shall be \$12,500. The annual license fee for a private resort hotel
14 with at least 11 but no more than 15 designated areas shall be \$17,500. The annual license fee
15 for a private resort hotel with no fewer than 15 nor more than 20 designated areas shall be
16 \$22,500: *Provided*, That a private resort hotel having obtained the license and paid the \$22,500
17 annual license fee may, upon application to and approval of the commissioner, designate
18 additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per
19 designated area.

20 (c) The fee for any such license issued following January 1 of any year and to expire on
21 June 30 of such year shall be one half of the annual license fee prescribed by subsections (a)
22 and (b) of this section.

23 (d) A licensee that fails to complete a renewal application and make payment of its annual
24 license fee in renewing its license on or before June 30 of any subsequent year, after initial
25 application, shall be charged an additional \$150 reactivation fee. The fee payment may not be
26 prorated or refunded, and the reactivation fee must be paid prior to the processing of any renewal
27 application and payment of the applicable full year annual license fee. A licensee who continues

28 to operate upon the expiration of its license is subject to all fines, penalties and sanctions available
29 in §60-7-13 and §60-7-13a of this code, all as determined by the Commissioner.

30 ~~(d)~~ (e) All such fees shall be paid by the commissioner to the State Treasurer and credited
31 to the General Revenue Fund of the state.

§60-7-6a. Special privilege of Class A private club licensee to operate separate but connected Class B license.

1 The commissioner, at his or her discretion, may authorize a Class A licensed private club
2 with a 1,000 or more members to operate a Class B license for off-premises sales of beer pursuant
3 to §11-16-1 et seq. of this code and a Class B license for off-premises sales of wine pursuant to
4 §60-8-1 et seq. of this code, if such Class B license meet licensure requirements and is operated
5 in a connected, but separately operated area of the same licensed premises (with separation
6 barriers including, but not limited to: walls, doors, windows or separate entrances) where the
7 Class A License and Class B license or licenses are operated under separate cash registers and
8 tax identification numbers and are licensed separately and correctly, and further all licenses are
9 operated and licensed to the same person. Any involvement with hidden ownership and violations
10 of §60-7-12(a)(3), §60-7-12a(a), §11-16-18(a)(3), §11-16-19(a)(1), §60-8-20(c) or §60-8-20a(a)
11 or (b) of this code shall be grounds for the immediate suspension of all above mentioned licenses,
12 and further grounds for revocation of the license pursuant to §60-7-13 and §60-7-13a of this code.
13 Failure to license any inner-connected business on the same licensed premises is grounds for a
14 licensee to be subject to the penalties available under this article.

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

1 The commissioner may issue a special license to be designated a Class S2 license for the
2 retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer, for on-premises
3 consumption at a festival, fair, or other event, provided that, the festival, fair, or other event is
4 sponsored, endorsed, or approved by the governing body (or its duly elected or appointed officers)

5 of either the municipality or of the county wherein the festival, fair, or other event is to be
6 conducted. Such special license shall be temporary and issued for a term no longer than 10
7 consecutive days and the fee therefor shall be \$750. This fee shall be per each 10-day event
8 application and shall not be prorated or refunded. No more than 6 licenses shall be issued to any
9 single licensee during any calendar year. The license application shall contain such information
10 as the commissioner may reasonably require and shall be submitted to the commissioner at least
11 15 days prior to the event. Nonintoxicating beer or nonintoxicating craft beer sold, furnished,
12 tendered, or served for this temporary special license shall be purchased from a licensed
13 distributor or resident brewer, acting in a limited capacity as a distributor, in accordance with §11-
14 16-1 et seq. of this code that services the territory where the festival, fair, or other event is
15 occurring. Wine sold, furnished, tendered, or served for the temporary special license shall be
16 purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 et seq.
17 of this code. Liquor sold, furnished, or served for the temporary special license shall be purchased
18 from a licensed retail liquor outlet, in accordance with §60-3A-1 et seq. of this code, located in the
19 market zone or contiguous market zone where the festival, fair, or other event is occurring, all as
20 determined by the commissioner. Licensed beer distributor representatives, brewer
21 representatives, resident brewer representatives, wine distributor representatives, winery and
22 farm winery representatives, and liquor representatives may attend the festival, fair, or other event
23 and discuss their respective products but shall not engage in the purchasing, selling, furnishing,
24 tendering or serving of the nonintoxicating beer, nonintoxicating craft beer, beer, wine, or liquor.
25 A licensee licensed by this section may utilize bona fide employees or volunteers. Any third party
26 or unrelated entities or individuals who are not listed on the Class S2 license shall not perform
27 any duties or functions of the licensee.

28 A license issued under the provisions of this section and the licensee holding the license
29 are subject to all other provisions of this article and the rules and orders of the commissioner
30 relating to the special license: *Provided*, That the commissioner may by rule or order allow certain

31 waivers or exceptions with respect to those provisions, rules or orders as the circumstances of
32 each event requires, including, without limitation, the right to revoke or suspend immediately any
33 license issued pursuant to this section prior to any notice or hearing notwithstanding the
34 provisions of §60-7-13a of this code: *Provided, however,* That under no circumstances may the
35 provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

1 (a) It is unlawful for any licensee, or agent, employee or member thereof, on such
2 licensee's premises to:

3 (1) Sell, or offer for sale, tender or serve any alcoholic liquors other than by the drink
4 poured from the original package or container, except as authorized in §60-6-8 of this code;

5 (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper
6 entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine,
7 multiple coin console slot machine, or device in the nature of a slot machine; however, various
8 games, gaming and wagering conducted by duly licensed persons of the West Virginia State
9 Lottery Commission, charitable bingo games conducted by duly licensed charitable or public
10 service organization (or its auxiliaries) pursuant to §47-20-1 et seq. of this code, and charitable
11 raffle games conducted by a duly licensed charitable or public service organization (or its
12 auxiliaries) pursuant to §47-21-1 et seq. of this code, all of which are permissible on a licensee's
13 licensed premises when operated in accordance with this code, rules and regulations;

14 (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating
15 beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine,
16 or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

17 (4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating
18 beer, wine, or alcoholic liquors, for or to any person known to be deemed legally incompetent, or
19 for or to any person who is physically incapacitated due to consumption of nonintoxicating beer,
20 wine or alcoholic liquor or the use of drugs;

21 (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any
22 licensed premises, or in any rooms directly connected therewith, between the hours of 3 o'clock
23 a.m. and 1 o'clock p.m., or, between the hours of 3 o'clock a.m. and 10 o'clock a.m. in any county
24 upon approval as provided for in ~~§7-1-3pp~~ §7-1-3ss of this code, on any Sunday;

25 (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating
26 beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of
27 age;

28 (7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand
29 name of any alcoholic liquor;

30 (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or
31 approved dues paying member in good standing of said private club or a guest of such member;

32 (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide,
33 cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption except as
34 authorized by the commissioner;

35 (10) (A) Employ any person who is less than 18 years of age in a position where the
36 primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating
37 beer, wine, or alcoholic liquors to any person;

38 (B) Employ any person who is between the ages of 18 and 21 who is not directly
39 supervised by a person aged 21 or over in a position where the primary responsibility for such
40 employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors
41 to any person; or

42 (11) Violate any reasonable rule of the commissioner.

43 (b) It is unlawful for any licensee to advertise in any news media or other means, outside
44 of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

45 (c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor
46 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or

47 imprisoned in the county jail for a period not to exceed 1 year, or both fined and imprisoned.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

1 Any proprietor or any person in charge of a dance house, concert saloon, theater,
2 museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors
3 are sold or given away, or any place of entertainment injurious to health or morals who admits or
4 permits to remain therein any minor under the age of 18 years, unless accompanied by his or her
5 parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a
6 fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) a private
7 hotel, private 9-hole golf course, private resort hotel, and private golf club licensed pursuant to
8 §60-7-1 et seq. of this code and in compliance with subdivision (8), subsection (f), section two of
9 said article §60-7-2(g)(8), §60-7-2(h)(7) and §60-7-2(i)(7) of this code; or (b) a private club with
10 more than 1,000 members that is in good standing with the Alcohol Beverage Control
11 Commissioner, that has been approved by the Alcohol Beverage Control Commissioner and
12 which has designated certain seating areas on its licensed premises as nonalcoholic liquor and
13 nonintoxicating beer areas, as noted in the licensee's floorplan; or (c) a private fair and festival
14 that is in compliance with §60-7-2(f)(7), by utilizing a mandatory carding or identification program
15 whereby all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or
16 nonintoxicating craft beer are asked and must provide their proper identification to verify their
17 identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale
18 or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.