

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 561

SENATORS TRUMP, TAKUBO, AND BOSO, *original sponsors*

[Passed March 9, 2019; in effect 90 days from passage]

1 AN ACT to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §11-16-18 of said code; to amend said code by adding thereto two
3 new sections, designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-
4 6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5,
5 §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new
6 sections, designated §60-7-6a and §60-7-8a; to amend and reenact §60-8-34 of said
7 code; and to amend and reenact §61-8-27 of said code, all relating to alcoholic beverages
8 generally; creating a county option election on forbidding nonintoxicating beer, wine, or
9 alcoholic liquors to be sold, given, or dispensed after 10:00 a.m. on Sundays in lieu of a
10 county option election to permit such sales; delineating hours of unlawful sale on a Sunday
11 generally; permitting the Alcohol Beverage Control Administration to request the
12 assistance of law enforcement; limiting the jurisdiction of such requested law-enforcement
13 assistance; implementing a \$100 operations fee and establishing special revenue account
14 and fund; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying
15 that West Virginia licensees can only sell liquor by the drink with certain exceptions;
16 clarifying prohibition on liquor bottle sales in Class A licenses; providing for a bottle service
17 fee and establishing requirements for bottle service; clarifying certain licensing
18 requirements for licensure; providing guidance on certain lawful conduct such as wine
19 bottle sales and frozen drink machines; forbidding the operation of certain bring your own
20 bottle establishments; creating a private fair and festival license; definitions; license
21 requirements; license fee; creating the private hotel license and license fee; creating a
22 private nine-hole golf course license and fee; removing the need for golf carts to be offered
23 at licensed golf courses; definitions; license requirements; license fee; permitting a private
24 resort hotel to have inner-connection with a resident brewer who has a brewpub; providing
25 a 30-day requirement to issue or deny a completed license application; creating a
26 reactivation fee for licensees who fail to timely file their renewal application and pay their

27 annual license fees; permitting a license privilege for certain licensees to operate a
28 connected but separately operated Class A on-premises license and a Class B off-
29 premises license; clarifying that certain state-licensed gaming is permissible in a private
30 club; clarifying permitted hours of operation for certain licensees; clarifying unlawful
31 Sunday sales for certain wine licensees; and permitting minors to attend a private hotel,
32 private nine-hole golf course, and a private fair or festival under certain conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10:00 a.m. on Sundays.

1 Beginning July 1, 2019, the county commission of any county may conduct a county option
2 election on the question of whether the sale or dispensing of nonintoxicating beer, wine, or
3 alcoholic liquors in or on a licensed premises shall be allowed in the county beginning 1:00 p.m.
4 on any Sunday, as provided in §11-16-18 of this code, §60-7-12 of this code, §60-8-34 of this
5 code upon approval as provided in this section. The option election on this question may be placed
6 on the ballot in each county at any primary or general election. The county commission of the
7 county shall give notice to the public of the election by publication of the notice as a Class II-0
8 legal advertisement in compliance with the provisions of §60-59-3 of this code, and the publication
9 area for publication shall be the county in which the election is to be held. The date of the last
10 publication of the notice shall fall on a date within the period of the 14 consecutive days next
11 preceding the election. On the local option election ballot shall be printed the following: "Shall the
12 beginning hour at which nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for
13 licensed on-premises consumption only in _____ County on Sundays be changed from 10:00
14 a.m. to 1:00 p.m.

15 If approved by the voters this would forbid private clubs and restaurants licensed to sell
16 and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants,
17 private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed
18 Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until
19 1:00 p.m.

20 Yes No

21 (Place a cross mark in the square opposite your choice.)

22 The ballots shall be counted, returns made and canvassed as in general elections, and
23 the results certified by the commissioners of election to the county commission. The county
24 commission shall, without delay, certify the result of the election. Upon receipt of the results of
25 the election, in the event a majority of the votes are marked "Yes", all applicable licensees shall
26 be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In
27 the event a majority of the votes are marked "No", all applicable licensees will continue to be
28 required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It shall be unlawful:

2 (1) For any licensee, his, her, its or their servants, agents, or employees to sell, give, or
3 dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms
4 directly connected, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m.
5 and 7:00 a.m., or between the hours of 2:00 a.m. and 10:00 a.m., or a Class A retail dealer who
6 sells nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and
7 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday,
8 except in private clubs licensed under the provisions of §60-7-1 *et seq.* of this code, where the
9 hours shall conform with the hours of sale of alcoholic liquors;

10 (2) For any licensee, his, her, its or their servants, agents, or employees to sell, furnish,
11 or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably
12 intoxicated or to any person known to be insane or known to be a habitual drunkard;

13 (3) For any licensee, his, her, its or their servants, agents, or employees to sell, furnish,
14 or give any nonintoxicating beer as defined in this article to any person who is less than 21 years
15 of age;

16 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
17 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to
18 collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein
19 contained in this section prohibits a licensee from crediting to a purchaser the actual price charged
20 for packages or containers returned by the original purchaser as a credit on any sale, or from
21 refunding to any purchaser the amount paid or deposited for the containers when title is retained
22 by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the
23 transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the
24 nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and
25 the distributor shall initiate the transfer no later than noon of one business day after the delivery;

26 (5) For any brewer or distributor or brew-pub or his, her, its or their agents to transport or
27 deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

28 (6) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs,
29 or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in
30 selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar
31 inducement, except advertising matter of nominal value, to either trade or consumer buyers:
32 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein
33 contained in this section prohibits a brewer from sponsoring any professional or amateur athletic
34 event or from providing prizes or awards for participants and winners in any events: *Provided*,

35 *however*, That no event shall be sponsored which permits actual participation by athletes or other
36 persons who are minors, unless specifically authorized by the commissioner;

37 (7) For any licensee to permit in his or her premises any lewd, immoral or improper
38 entertainment, conduct, or practice;

39 (8) For any licensee except the holder of a license to operate a private club issued under
40 the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant
41 issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt
42 or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other
43 than nonintoxicating beer;

44 (9) For any licensee to obstruct the view of the interior of his or her premises by enclosure,
45 lattice, drapes, or any means which would prevent plain view of the patrons occupying the
46 premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*,
47 That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises
48 of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the premises of
49 a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

50 (10) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in
51 the sale, possession, or consumption of any alcoholic liquors on the premises covered by a
52 license or on premises directly or indirectly used in connection with it: *Provided*, That the
53 prohibition contained in this subdivision with respect to the selling or possessing or to the
54 acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with
55 respect to the holder of a license to operate a private club issued under the provisions of §60-7-
56 1 *et seq.* of this code nor shall the prohibition be applicable to a private wine restaurant licensed
57 under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is
58 authorized to serve wine;

59 (11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this
60 article, purchased, or acquired from any source other than a distributor, brewer, or manufacturer
61 licensed under the laws of this state;

62 (12) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon
63 his or her premises or to permit the use of loud musical instruments if either or any of the same
64 may disturb the peace and quietude of the community where the business is located: *Provided*,
65 That a licensee may have speaker systems for outside broadcasting so long as the noise levels
66 do not create a public nuisance or violate local noise ordinances;

67 (13) For any person whose license has been revoked, as provided in this article, to obtain
68 employment with any retailer within the period of one year from the date of the revocation, or for
69 any retailer to knowingly employ that person within the specified time;

70 (14) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating
71 beer except in the original container;

72 (15) For any licensee to knowingly permit any act to be done upon the licensed premises,
73 the commission of which constitutes a crime under the laws of this state;

74 (16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his
75 or her licensed premises;

76 (17) For any Class A licensee, his, her, its or their servants, agents, or employees, or for
77 any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any
78 person less than 18 years of age to loiter in or upon any licensed premises; except, however, that
79 the provisions of this subdivision do not apply where a person under the age of 18 years is in or
80 upon the premises in the immediate company of his or her parent or parents, or where and while
81 a person under the age of 18 years is in or upon the premises for the purpose of and actually
82 making a lawful purchase of any items or commodities therein sold, or for the purchase of and
83 actually receiving any lawful service therein rendered, including the consumption of any item of

84 food, drink or soft drink therein lawfully prepared and served or sold for consumption on the
85 premises;

86 (18) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer
87 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
88 beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose
89 principal place of business or licensed premises is within the assigned territory of another
90 distributor of such nonintoxicating beer: *Provided*, That nothing in this section is considered to
91 prohibit sales of convenience between distributors licensed in this state where one distributor
92 sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale;
93 and

94 (19) For any licensee or any agent, servant, or employee of any licensee to knowingly
95 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of
96 chapter 29A of this code.

97 (b) Any person who violates any provision of this article including, but not limited to, any
98 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
99 makes any false statement concerning any material fact in submitting application for license or
100 for a renewal of a license or in any hearing concerning the revocation thereof, or who commits
101 any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction
102 thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or
103 confined in the county or regional jail for not less than 30 days nor more than six months, or by
104 both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any
105 other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising
106 under this article.

107 (c) (1) A Class B licensee that:

108 (A) Has installed a transaction scan device on its licensed premises; and

109 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of
110 any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the
111 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
112 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
113 or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of
114 nonintoxicating beer to an individual who is less than 21 years of age by one of his or her
115 employees, servants, or agents. Any agent, servant, or employee who has improperly sold,
116 furnished or given away nonintoxicating beer to an individual less than 21 years of age is subject
117 to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who
118 has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21
119 years of age is subject to termination from employment, and the employer shall have no civil
120 liability for the termination.

121 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each
122 employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is
123 sold by providing evidence: (A) That it has developed a written policy which requires each
124 employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will
125 be sold, furnished, or given away; (B) that it has communicated this policy to each employee,
126 servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents
127 regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken
128 corrective action for any discovered noncompliance with this policy.

129 (3) "Transaction scan" means the process by which a person checks, by means of a
130 transaction scan device, the age, and identity of the cardholder, and "transaction scan device"
131 means any commercial device or combination of devices used at a point of sale that is capable
132 of deciphering in an electronically readable format the information enclosed on the magnetic strip
133 or bar code of a driver's license or other governmental identity card.

134 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or
135 be considered to prohibit any licensee from employing any person who is at least 18 years of age
136 to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as
137 defined in this article. With the prior approval of the commissioner, a licensee whose principal
138 business is the sale of food or consumer goods or the providing of recreational activities, including,
139 but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling
140 alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons
141 who are less than 18 years of age but at least 16 years of age: *Provided*, That the person's duties
142 may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided*,
143 *however*, That the authorization to employ persons under the age of 18 years shall be clearly
144 indicated on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-17a. Law enforcement cooperation.

1 In addition to the assistance of law enforcement provided under §15-2-12 of this code, the
2 commissioner may obtain assistance in the enforcement of §11-16-1 *et seq.* and §60-1-1 *et seq.*
3 of this code from county or municipal law-enforcement agencies by making a written request
4 therefor. The assistance authorized by this section is limited only to accompanying the
5 commissioner and his or her agents and may not be unreasonably withheld. Any law-enforcement
6 officer acting pursuant to this section may further act upon crimes committed in his or her
7 presence: *Provided*, That any officer so acting must be within his or her geographic jurisdiction,
8 and nothing in this section authorizes any officer to act outside of the scope of his or her
9 geographic jurisdiction.

§60-2-17b. Wine and liquor operating fund established; operations fee; fund issues.

1 (a) As of July 1, 2019, there is an annual nonrefundable and nonprorated operational fee
2 of \$100 for all distilleries, mini-distilleries, wineries, farm wineries, Class A retail licensees, Class
3 B retail licensees, private clubs, private wine retailers, wine specialty shops, wine restaurants,

4 private wine spas, private wine bed and breakfasts, wine suppliers, and wine distributors which
5 shall be paid on or before July 1, 2019, and every July 1 thereafter. All fees collected by the
6 commissioner pursuant to this section shall be deposited in a special revenue account in the State
7 Treasury, hereby created, to be known as the Wine and Liquor Operations Fund. Moneys in the
8 fund may only be expended by the commissioner for the administration of this chapter, as
9 appropriated by law.

10 (b) Licensees holding multiple licenses for nonintoxicating beer, nonintoxicating craft beer,
11 wine, or liquor shall be subject to paying only one operations fee of \$100 under this chapter and
12 under §11-16-10(d) of this code.

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
14 authority 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 correctional 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
27 of 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, 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 code;

9 (5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by his or her
10 license;

11 (6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the
12 alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to
13 liquor by the drink are as follows:

14 (A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with
15 the commissioner and has paid a \$1000 on-premises only bottle service fee to the commissioner,
16 may sell or serve liquor by the bottle to two or more persons for consumption on the licensed
17 premises only, and any liquor bottle sold by such a private club shall be sold at retail for personal
18 use, and not for resale, to a person for not less than 300 percent of the private club's cost, and
19 no such liquor bottle shall be removed from the licensed premises by any person or the licensee;
20 and

21 (B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine
22 by the bottle to two or more persons for consumption on the licensed premises only, unless such
23 licensee has obtained a license or privilege authorizing other activity;

24 (7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original
25 container: *Provided*, That a licensee may sell, furnish, tender, and serve pre-mixed beverages
26 consisting of alcoholic liquors, nonalcoholic mixer, and ice if:

27 (A) The frozen drink mixing machine is emptied and sanitized daily; and

28 (B) That a written record reflecting the cleaning and sanitizing of the frozen drink machine
29 is maintained for inspection by the commissioner and health inspectors;

30 (8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of
31 this chapter;

32 (9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered
33 alcohol;

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

36 A person who violates any provision of this section shall be guilty of a misdemeanor and,
37 upon conviction, shall be fined not less than \$50 nor more than \$500 or confined in jail not less
38 than 30 days nor more than one year, or both such fine and confinement for the first offense.
39 Upon conviction of a second or subsequent offense, the court may in its discretion impose a
40 penalty of confinement in a state correctional facility for a period not to exceed three years. A
41 person who violates any provision of this section for the second or any subsequent offense under
42 this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
43 correctional 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;

5 (4) Operate a business without a license issued under §60-1-1 *et seq.* of this code which
6 knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site
7 items such as cups, glasses, ice, and nonalcoholic beverages used to mix with alcoholic liquors,
8 refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather,
9 perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or

10 other similar activity or entertainment. Such business may be commonly known as a “bring your
11 own bottle”, “bring your own booze”, or “BYOB” establishments;

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

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

17 (b) Any law-enforcement officer may arrest without a warrant and take the following
18 actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of
19 this section: (1) If there is some nonintoxicated person who will accept responsibility for the
20 intoxicated person, the officer may issue the intoxicated person a citation specifying a date for
21 appearance before a judicial officer and release him or her to the custody of the individual
22 accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever
23 feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance
24 of a citation, transport the individual to the individual’s present residence, or arrange for the
25 transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1)
26 and (2) of this subsection are not possible, the officer shall transport or arrange for transportation
27 to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-
28 enforcement officer’s judgment, is in need of acute medical attention, that officer shall arrange for
29 transportation by ambulance or otherwise to a hospital emergency room. The officer shall
30 accompany the individual until he or she is discharged from the emergency room or admitted to
31 the hospital. If the individual is released from the emergency room, the officer may proceed as
32 described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the
33 hospital, the officer shall issue a citation to the individual specifying a date for appearance before
34 a judicial officer.

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

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

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

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

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

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

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

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

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

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

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

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

82 (i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of
83 a misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor more
84 than \$500; and upon conviction of second or subsequent offense, he or she is guilty of a felony

85 and, shall be confined in a state correctional facility for a period of not less than one year nor more
86 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 guests 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 guests; 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 guests 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 guests; 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 guests 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 guests.

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 offers a conference center for meetings;

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

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

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

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

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

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

84 (h) "Private resort hotel" means an applicant for a private club or licensed private club
85 licensee meeting the criteria set forth in this subsection which:

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

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

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

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

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

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

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

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

108 (9) May have a separately licensed resident brewer with a brewpub license inner-
109 connected via a walkway, doorway, or entryway, all as determined and approved by the
110 commissioner, for limited access during permitted hours of operation for tours and complimentary
111 samples at the resident brewery.

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

114 (1) Has at least 100 members;

115 (2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes,
116 not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

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

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

123 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining
124 buildings and structures on the private golf club's floorplan which would comprise the licensed

125 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic
126 liquors throughout the licensed premises whether these activities were conducted in a building or
127 structure or outdoors while on the private golf club's licensed premises and as noted on the private
128 golf club's floorplan;

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

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

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

134 (1) Has at least 50 members;

135 (2) Maintains at least one nine-hole golf course with separate and distinct golf playing
136 holes;

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

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

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

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

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

153 The Department of Natural Resources, the authority governing any county or municipal
154 park, or any county commission, municipality, other governmental entity, public corporation or
155 public authority operating any park or airport may lease as lessor a building or portion thereof or
156 other limited premises in any such park or airport to any corporation or unincorporated association
157 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 and as otherwise authorized by
3 the provisions of §60-1-1 *et seq.* of this code, other than in sealed packages, for consumption on
4 the premises of the licensees, to their members and their guests in accordance with the provisions
5 of this article, rules of the commissioner and as authorized under §60-6-8 of this code. The
6 licensees may keep and maintain on their premises a supply of those lawfully acquired alcoholic
7 liquors in 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;

13 (8) Accurate and complete ownership information;

14 (9) An attestation that the information in the application is true and accurate; and

15 (10) Such other information as the commissioner may reasonably require which shall
16 include, but not be limited to, the criminal records, if any, of each member of the applicant's
17 governing board and/or its officers and directors who have been convicted of a felony or a crime
18 involving moral turpitude.

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 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 this article and in §60-7-4(a) of this code, all as determined
8 by 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, or persons with an undisclosed pecuniary
11 interest, and no omissions or failures to disclose in such application as determined by the
12 commissioner, he or she shall issue a license authorizing the applicant to sell alcoholic liquors as
13 provided in §60-7-3 of this code, and otherwise shall refuse to issue such license, except that in
14 the case of an application by a corporation or association to operate a private club in connection
15 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 fewer than 1,000 members, \$2,000 if the private club is a private
6 nine-hole golf course as defined in §60-7-2 of this code; \$2,500 if the private club has 1,000 or
7 more members, \$4,000 if the private club is a private hotel with three or fewer designated areas
8 or a private golf club as defined in §60-7-2 of this code, and further, if the private club is a private
9 resort hotel as defined in §60-7-2 of this code, said private resort hotel may designate areas within
10 the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as
11 provided for by this article. The annual license fee for a private resort hotel with five or fewer

12 designated areas shall be \$7,500, and the annual license fee for a private resort hotel with at least
13 six but no more than 10 designated areas shall be \$12,500. The annual license fee for a private
14 resort hotel with at least 11 but no more than 15 designated areas shall be \$17,500. The annual
15 license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas
16 shall be \$22,500: *Provided*, That a private resort hotel having obtained the license and paid the
17 \$22,500 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
29 available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

30 (e) All such fees shall be paid by the commissioner to the State Treasurer and credited to
31 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 A Class A private club licensee with 1,000 or more members may, in the commissioner's
2 discretion, operate Class B licenses for the off-premises sale of nonintoxicating beer and wine in
3 a connected but separately operated area of the Class A private club premises: *Provided*, That
4 each business is licensed separately and operates separate cash registers and maintains

5 separation barriers between the different licensed operations. Failure of a licensee to license two
6 inner-connected businesses shall subject the licensee to the penalties 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 (a) There is hereby created a special license designated Class S2 private fair and festival
2 license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for
3 on-premises consumption.

4 (b) To be eligible for the license authorized by subsection (a) of this section, the private
5 fair and festival or other event shall:

6 (1) Be sponsored, endorsed, or approved by the governing body or its designee of the
7 county or municipality in which the private fair and festival or other event is located;

8 (2) Shall make application with the commission at least 15 days pursuant to the private
9 fair, festival, or other event;

10 (3) Pay a nonrefundable nonprorated license fee of \$750; and

11 (4) Be approved by the commissioner to operate the private fair, festival, or other event.

12 (c) A private fair and festival license under this section shall be for a duration of no more
13 than 10 consecutive days and no more than six licenses may be issued to the same person or
14 entity in a calendar year.

15 (d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served
16 pursuant to the license created by this section must be purchased from the licensed distributor
17 that services the area in which the private fair and festival is held or from a resident brewer acting
18 in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

19 (e) Wine sold, furnished, tendered, or served pursuant to the license created by this
20 section shall be purchased from a licensed distributor, winery, or farm winery in accordance with
21 §60-8-1 *et seq.* of this code.

22 (f) Liquor sold, furnished, tendered, or served pursuant to the license created by this
23 section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous
24 market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 *et seq.*
25 of this code.

26 (g) A licensee authorized by this section may utilize bona fide employees or volunteers to
27 sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

28 (h) Licensed representatives of a brewer, resident brewer, beer distributor, wine
29 distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker
30 representatives may attend a private fair and festival and discuss their respective products but
31 shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer,
32 nonintoxicating craft beer, wine, or liquor.

33 (i) A license issued under this section and the licensee are subject to all other provisions
34 of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may
35 by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or
36 orders as the circumstances of each private fair and festival require, including without limitation,
37 the right to revoke or suspend immediately any license issued under this section prior to any
38 notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no
39 circumstances may the provisions of §60-7-12 of this code be waived or an exception granted
40 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, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured
4 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: *Provided,*
14 That a private resort hotel holding a license issued pursuant to §60-7-1 *et seq.* of this code, may
15 sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises
16 licensed under §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code, during
17 hours of operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of
18 this code;

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

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

26 (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any
27 licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m.
28 and 7:00 a.m. on weekdays or Saturdays, between the hours of 3:00 a.m. and 10:00 a.m. on any
29 Sunday or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided
30 for in §7-1-3ss of this code, on any Sunday; and

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

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

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

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

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

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

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

49 (b) It is lawful for any licensee to advertise price and brand in any news media or other
50 means, outside of the licensee's premises.

51 (c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor
52 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or
53 imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-34. When retail sales prohibited.

1 It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine
2 bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants,
3 agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and 10:00 a.m. or, it
4 shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine
5 restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between
6 the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of
7 this code, on Sundays, or between the hours of 2:00 a.m. and 7:00 a.m. on weekdays and
8 Saturdays.

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 nine-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 §60-7-2(g)(8), §60-7-2(h)(7), §60-7-2(i)(7),
9 and §60-7-2(j)(7) of this code; (b) a private club with more than 1,000 members that is in good
10 standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol
11 Beverage Control Commissioner and which has designated certain seating areas on its licensed
12 premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's
13 floorplan; or (c) a private fair and festival that is in compliance with §60-7-2(f)(7) of this code, by
14 utilizing a mandatory carding or identification program whereby all members or guests being

15 served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and
16 must provide their proper identification to verify their identity and further that they are of legal
17 drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors,
18 nonintoxicating beer, or nonintoxicating craft beer.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor