WEST virginia legislature

2021 regular session

Introduced

House Bill 2025

By Delegates Hanshaw (mr. Speaker) and Skaff  
[By Request of the Executive]

[Introduced February 16, 2021; Referred to the Committee on Government Organization]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-16-6d and §11-16-11c; to amend and reenact §11-16-9 of said code; to amend said code by adding thereto two new sections, designated §19-2-13 and §19-2-14; to amend and reenact §60-1-5a of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend said code by adding thereto a new section, designated §60-4-3c; to amend and reenact §60-6-8 of said code; to amend and reenact §60-7-2 and §60-7-6 of said code; to amend said code by adding thereto five new sections, designated §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, and §60-7-8f; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, and §60-8-29 of said code; to amend said code by adding thereto four new sections, designated §60-8-6c, §60-8-6d, §60-8-6e, and §60-8-32a; to amend said code by adding thereto a new article, designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6; and to amend and reenact §61-8-27 of said code, all relating to creating the authority and license to deliver nonintoxicating beer or nonintoxicating craft beer with requirements, no additional fee for certain licensees, a license fee for third parties, and a nonintoxicating beer retail transportation permit with a fee and requirements; providing certain licensees with the authority for nonintoxicating beer nonintoxicating craft beer outdoor dining and outdoor street dining; authorizing in-person or in-vehicle pick up of purchased food and nonintoxicating beer or nonintoxicating beer orders-to-go; creating an unlicensed brewer or home brewer temporary license for use at fairs and festivals, requirements, and a license fee; relating to the manufacture and sale of hard cider and wine by establishing the Agriculture Development Fund; establishing permitted expenditures from the Agriculture Development Fund; creating a new program to develop hard cider; providing for wine definitions; clarifying various aspects of wine, specifically the alcohol by volume percentage for table wine, wine, and fortified wine; adding the definition of “nonfortified dessert wine”; creating a private manufacturer club license for distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries, requirements, and a license fee; authorizing distilleries, mini-distilleries, and micro-distilleries to also operate wineries, farm wineries, brewers, and resident brewers; authorizing wineries and farm wineries to also operate as distilleries, mini-distilleries, micro-distilleries, brewers, and resident brewers; creating a private direct shipper license, requirements, and license fee; authorizing the ability to pre-mix alcoholic liquors, creating a permit, and permit fee per approved alcohol beverage; creating private caterer license, requirements, and license fee; creating a private club bar license, requirements, and license fee; creating a private club restaurant license, requirements, and license fee; creating a private manufacturer club license, requirements, and license fee; authorizing a distillery, mini-distillery, or micro-distillery to also obtain a winery or farm winery license; authorizing a winery or farm winery to also obtain a distillery, mini-distillery, or micro-distillery license; creating a private tennis club license, requirements, and license fee; creating a private wedding venue or barn license, requirements, and license fee; creating a one-day charitable rare, antique, or vintage liquor auction license on a limited basis for charitable purposes, requirements, and license fee; creating a private multi-vendor fair and festival license, requirements, and license fee; creating private outdoor dining and private outdoor street dining areas as legally demarcated areas that are not a public place; authorizing and creating craft cocktail growlers, requirements, license fee, and a private cocktail delivery permit; authorizing in-person or in-vehicle pick up of purchased food and craft cocktail growler orders-to-go; clarifying penalties for failure to meet wine licensure requirements; replacing wine bond requirements that secure the payment of taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are acting as either suppliers or distributors in a limited capacity, with an affidavit; providing penalties for failure to pay taxes and maintain good standing with the state; authorizing wineries and farm wineries to sell wine growlers, requirements, and no license fee; authorizing certain Class A and Class B licensees to sell wine growlers, requirements, and license fee; creating the authority and license to deliver wine with a private wine delivery license, requirements, no additional fee for certain licensees, a license fee for third parties, and a private wine retail transportation permit, requirements and a permit fee; creating private wine outdoor dining and private wine outdoor street dining areas as legally demarcated areas that are not a public place; authorizing in-person or in-vehicle pick up of purchased food and wine orders-to-go; providing that there is no separate license required to manufacture and sell hard cider under certain conditions; providing for a hard cider distributor’s license; providing for hard cider exemptions to the wine liter tax**;** establishing a hard cider gallon tax; providing for the application of West Virginia Tax Procedures and Administration Act and West Virginia Tax Crimes and Penalties Act to the hard cider gallon tax; providing for an internal effective date; providing for a tax credit against the hard cider tax; providing for applicability of other laws; requiring regular reports to the Tax Commissioner; providing for applications to import products necessary to manufacture hard cider under certain conditions; providing for hard cider sales for consumption; providing for complementary samples to be given; establishing requirements for complementary samples; permitting the sale of wine growlers; wine growler requirements and fee, in certain circumstances; and providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verifications systems.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; requirements; and permit fee.

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee’s employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer via telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee’s license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process must meet the requirements of this section and penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license when contracted with one or more Class A retail dealers who are licensed to sell nonintoxicating beer or nonintoxicating craft beer for the privilege of ordering and delivery of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer via telephone, a mobile ordering application, or a web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery license nonprorated, nonrefundable fee is $250 per third party entity, with no limit on the number of drivers and vehicles.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner, including, but not limited to any third party licensee contracts.

(d) *Sale Requirements*. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase must accompany the purchase of prepared food or a meal of at least $15 in total value, not including gratuity or taxes, and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any purchasing person must be 21 years of age or older, must not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer.

(3) Prepared food or a meal of at least $15 in total value, not including gratuity or taxes, shall for this article mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to a six-pack of bottles or cans, or one sealed growler of nonintoxicating beer or nonintoxicating craft beer per ordered meal, but any order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee. No percentage of the delivery order may be collected by the third party delivery licensee. The convenience fee charged by the third party delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Delivery Requirements*. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer must be 21 years of age older and each delivery person’s name, driver’s license, and vehicle information must be filed with the commissioner;

(2) Delivery persons must be trained on verifying legal identification and in identifying the signs of intoxication and certification of such training must be submitted to the commissioner;

(3) Each vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code;

(4) Delivery of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders by a Class A retail dealer may only occur in the county where the Class A retail dealer is located with all sales and municipal taxes accounted for and paid;

(5) Delivery of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders by a third party delivery licensee may occur in the county or contiguous counties where the contracted Class A retail dealer is located with all sales and municipal taxes accounted for and paid;

(6) Deliveries of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer are only permitted to addresses located in West Virginia;

(7) Deliveries of food or a meal, and nonintoxicating beer or nonintoxicating craft beer are not permitted to any other Class A licensee;

(8) Deliveries of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(9) Deliveries of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer shall not be delivered and left at any address without verifying a person’s age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person and the telephone, mobile ordering application, or web-based software must only permit the actual purchasing person to accept the food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to verification upon delivery with the delivery person’s visual review and verification and, as applicable, a stored scanned image of the purchasing person’s legal identification;

(2) Any application or web-based software utilized must create a stored record and image of the purchasing person’s legal identification and details of the sale, including the delivery driver’s name and vehicle information;

(3) Any telephone ordering system must maintain a log or record of the purchasing person’s legal identification and details of the sale, including the delivery driver’s name and vehicle information;

(4) All records are subject to inspection by the commissioner, must be retained for five years, and the records may not be unreasonably withheld for the commissioner’s inspection; and (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per subsection (g) of this section.

(g) *Retail Transportation Permit*. -

(1) Each delivery vehicle, whose driver is 21 years of age or older, may be permitted for the delivery of food or a meal, and nonintoxicating beer or nonintoxicating craft beer subject to the requirements of this article.

(2) A Class A retail dealer or a third party licensee must pay a permit fee of $10 per vehicle and provide vehicle and driver information, as reasonably requested by the commissioner. If the Class A retail dealer has obtained a private delivery vehicle permit per §60-7-8f or §60-8-6e of this code, there will not be an additional permit fee for each vehicle. Upon any change in vehicles or drivers, the licensee must update the commissioner immediately.

(h) *Enforcement*. -

(1) The Licensee, the licensee’s employees, or licensee’s independent contractors and any licensed third party, the licensed third party’s employees, or licensed third party’s independent contractors are responsible for any violations under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or receiving delivery of orders are deemed to be purchasers.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

(a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, then an additional $150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate upon the expiration of its license is subject to all fines, penalties and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is $150 for each place of business; the license fee for social, fraternal, or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, is $150: *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of $10 for each dining, club, or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A ~~licenses authorize the licensee~~ licensees are authorized to sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed, for consumption on the licensed premises or off the licensed premises when in a sealed original container and sold for personal use, and not for resale. Class A licensees must provide food or meals along with sealed nonintoxicating beer or nonintoxicating craft beer in the original container or in a sealed growler as set forth for sales and service in §11-16-6d of this code to a patron who is in-person or in-vehicle picking up food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-to-go, subject to verification that the purchaser is 21 years of age or older, and not visibly, noticeably, or physically intoxicated, and as otherwise specified in this article.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and unchilled beer, is $150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use, and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption.

A Class B license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article, the term “grocery store” means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises. Caterers or party supply stores are required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(C) A Class A retail dealer may contract, purchase, or develop a mobile ordering application or web-based software program to permit the ordering and purchase of nonintoxicating beer or nonintoxicating craft beer, as authorized by the licensee’s license. The nonintoxicating beer or nonintoxicating craft beer must be in a sealed original container or a sealed growler and meet the requirements set forth in §11-16-6d of this code.

(2) For a distributor, the license fee is $1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture located in this state and who produces:

(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is $500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is $1,500. The brewer is exempt from the requirements set out in subsections (c), (d), and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d), and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

(5) For a brewpub, the license fee is $500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer’s license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer’s or resident brewer’s manufacturing facilities, and the prior year’s production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer’s or resident brewer’s estimate that was filed with the application or renewal for a brewer’s or resident brewer’s license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is $100, and the fee may not be prorated or refunded, and must be accompanied with a license application, certification that the event meets certain requirements in the code and rules, and such other information as the commissioner may reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

(h) Notwithstanding subsections (a) and (b) of this section a Class A retail dealer, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor dining area or outdoor street dining area, as authorized by any municipal council or county commission and any state or county health department. The Class A retail dealer must submit the municipal council, county commission, or any state or county health department approval and a revised floorplan requesting to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner’s requirements, in an approved and bounded outdoor area that must be contiguous to the licensee’s licensed premises for nonintoxicating beer or nonintoxicating craft beer outdoor dining or that may be noncontiguous to the licensee’s licensed premises, but in close proximity, for nonintoxicating beer or nonintoxicating craft beer outdoor street dining. Nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code and private wine outdoor dining or private wine outdoor street dining set forth in §60-8-32a of this code.

(i) For purposes of this article, nonintoxicating beer or nonintoxicating craft beer outdoor dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining includes dining areas that are: (i) Outside and not served by an HVAC system for air handling services and use outside air; (ii) open to the air; (iii) not enclosed by fixed or temporary walls, however, the commissioner may seasonally approve a partial enclosure with up to two temporary or fixed walls; and (iv) not areas where seating is incorporated inside a permanent building with ambient air through HVAC.

§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.

(a) An unlicensed brewer or home brewer may obtain a temporary license upon meeting the requirements set forth in this section to sell its nonintoxicating beer or nonintoxicating craft beer for sampling and sales at a licensed fair and festival set forth in §11-16-11 and §11-16-11b of this code when granted approval of the licensee holding the fair and festival license and when issued a temporary and limited licensure by the commissioner. The unlicensed brewer or home brewer are exempt from the requirements of registering the brand and utilizing a distributor and a franchise agreement only for the limited nature of this temporary license only.

(b) An unlicensed brewer or home brewer shall be subject to the same limits, taxes, fees, requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code be waived nor shall any exception be granted with respect to those provisions.

(c) An unlicensed brewer, regardless of its designation in another state, but that is duly licensed in its domicile state and in good standing in that state, or for an unlicensed home brewer that is a resident of West Virginia, may pay a $150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for the unlicensed brewer or home brewer to provide nonintoxicating beer or nonintoxicating craft beer via a temporary sale, with all taxes paid and the appropriate markup applied to the nonintoxicating beer or nonintoxicating craft beer sold to a licensed fair or festival for the sampling and sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the licensed fair or festival.

(2) The unlicensed brewer or home brewer application shall include, but is not limited to, the person or entity’s name, address, taxpayer identification number, and location; if an unlicensed brewer or home brewer, a copy of its licensure in its domicile state and good standing; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it desires to temporarily provide for samples and temporarily sell as nonintoxicating beer or nonintoxicating craft beer to a licensee licensed under §11-16-11 and §11-16-11b of this code; and such other information as the commissioner may reasonably require.

(3) The applicant shall include a list of all nonintoxicating beers or nonintoxicating craft beers proposed to be temporarily sampled and temporarily sold in sealed containers a licensee licensed under §11-16-11 and §11-16-11b of this code so that the nonintoxicating beers or nonintoxicating craft beers may be reviewed in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list will create a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under §11-16-11 and §11-16-11b of this code for no additional fee.

(4) An applicant that receives this temporary special license for any event licensed under §11-16-11 and §11-16-11b of this code will provide a signed and notarized agreement where the applicant agrees to pay all municipal, local, and sales taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

(5) An application must be submitted per special license for an event licensed under §11-16-11 and §11-16-11b of this code that the applicant desires to attend, and the license fee shall cover up to two separate one-day licenses an event licensed under §11-16-11 and §11-16-11b of this code before an additional fee would be paid. In no circumstance would such an applicant be permitted to attend more than four events per year. Any such applicant desiring to attend more than four events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a brewery or resident brewery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, brand registration, franchise requirements, payment of beer barrel tax, and the appointment of a distributor franchise network, this temporary special license for an event licensed under §11-16-11 and §11-16-11b of this code, once granted, permits such a licensee to operate in this limited capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this code subject to the limitations noted in this section.

(7) The applicant will need to further apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state per §11-16-10(f) of this code.

(8) The applicant licensed by this section is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this sub-section: *Provided,* That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code be waived nor shall any exception be granted with respect to those provisions.

CHAPTER 19. AGRICULTURE.

Article 2. Marketing agricultural products.

§19-2-13. Agriculture Development Fund; administration; purpose; funding.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Agriculture Development Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of this code; any moneys that may be designated for deposit in this fund by an act of the Legislature; any moneys appropriated and designated for the fund by the Legislature; any moneys able to be transferred into the fund by authority of the commissioner from other funds; and gifts, donations, and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of fostering and supporting the development of agricultural sectors, such as hard cider, within the state, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-2-14. Hard cider development program; purpose; funding.

The commissioner shall establish a program to foster the development and growth of the hard cider industry in the state. The purpose of the program shall be to assist in the development of fruit inputs necessary for the production of hard cider in the state. The program shall be funded using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-13 of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article 1. General Provisions.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter “Farm winery” means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of such farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry or Madeira wine manufactured by a winery or a farm winery must not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) *Sales of liquor*. — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to §60-6-1 of this code, customers are prohibited from consuming any liquor on the premises of the distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-distillery who obtains a private manufacturer club license set forth in §60-7-2 of this code and a Class A retail dealer license set forth in §11-16-1 *et seq*. of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors as authorized per this subsection ~~of~~ when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises ~~only~~, and further such on premises consumption is permitted on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided for in §7-1-3pp of this code.

(b) *Retail off-premises consumption sales. —* Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, article three-a of this chapter and the provisions of articles three and four of this chapter applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees. —* The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption shall be subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however,* That no liquor sold by the distillery, mini-distillery, or micro-distillery shall be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers*. — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery’s market zone, proportionate to each market zone retailer’s annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall be required to submit to the commissioner is $15,000 per annum.

(e) *Limitations on licensees*. — No distillery, mini-distillery, or micro-distillery may sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location the initial two years of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the distillery, mini-distillery, micro-distillery location by 2,000 gallons following the initial24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. No licensed micro-distillery may produce more than 10,000 gallons per calendar year at the micro-distillery location. ~~No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license~~ The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or resident brewer as otherwise specified in the code.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code for retail sale to customers from the winery or farm winery for consumption off the premises only. Except for free complimentary samples offered pursuant to §60-6-1 of this code, the private wine restaurant licensed premises, or the private manufacturer club licensed premises, customers are prohibited from consuming any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code unless such winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That a licensed winery or farm winery may offer complimentary samples per this subsection of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss of this code.

(b) Complimentary samples allowed by the provisions of this section may not exceed two fluid ounces and no more than three such samples may be given to a patron in any one day.

(c) Complimentary samples may be provided only for on-premises consumption.

(d) A winery, farm winery, or farm entity pursuant to §60-1-5c of this code may offer for retail sale from their licensed premises sealed original container bottles of wine for off-premises consumption only.

(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code holding a multicapacity license and a private wine restaurant license may offer wine by the drink or glass in a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 et seq., §60-4-1 et seq., and §60-8-1 et seq. of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

(g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 et seq. of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package if the final purchase of such wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) No liter tax shall be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of such wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

(h) A winery or farm winery may advertise a particular brand or brands of wine produced by it and the price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery must maintain a separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and must pay all associated license fees, unless such winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 *et seq.*, of this code and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq.* of the code. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. ~~No more than one winery or farm winery license may be issued to a single person or entity and no person may hold both a winery and a farm winery license~~ Wineries or farm wineries may enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

(j) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or resident brewer, as otherwise specified in the code.

(~~j)~~ (k) For purposes of this section, terms will have the same meaning as provided in §8-13-7 of this code.

§60-4-3c. License required for sale and shipment of liquor by a distillery; shipment of limited quantities of liquor to adult residents permitted by a private direct shipper; requirements; and license fee.

(a) Authorization. - Except for the commissioner, no person may offer for sale liquor, sell liquor, or offer liquor for shipment into this state, except for a licensed private direct shipper. A distillery, whether located and licensed in this state or located and licensed out of this state, who desires to engage in the sale and shipment of liquor to an adult West Virginia resident for personal use, and not for resale under this article shall, prior to engaging in such activities, be licensed by the commissioner. The domicile state of any such distillery desiring to ship liquor to West Virginia must permit West Virginia licensed distillers, mini-distillers, and micro-distillers the reciprocal authority or licensure opportunity to ship into the distiller’s domicile state subject to that state’s requirements. A West Virginia licensed distillery, mini-distillery, or micro-distillery may ship liquor subject to the requirements in this chapter throughout West Virginia, except for those local option areas designated as “dry” areas per §60-5-1 *et seq*. of this code. All shipments of liquor into West Virginia by licensed private direct shippers shall be made by a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

(b) *License requirements*. – Before sending any shipment of liquor to an adult West Virginia resident, the private direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the $350 license fee to ship and sell only liquor;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the private direct shipper is licensed in its state of domicile as a distillery, is authorized by such state to ship liquor, and provides reciprocity to West Virginia distilleries, mini-distilleries, and micro-distilleries who obtain a private direct shipper license;

(6) Obtain from the commissioner a private direct shippers license;

(7) Submit to the commissioner a list of all brands of liquor to be shipped to adult West Virginia residents and attest by a notarized affidavit that all liquor brands are manufactured by the distillery seeking licensure and are not counterfeit or adulterated liquor; and

(8) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) *Shipping Requirements*. - All private direct shipper licensees shall:

(1) Not ship more than two bottles of liquor per month to any adult West Virginia resident for personal use and consumption, and not for resale. A bottle is defined as 750 ml bottle, and one or both bottles shall not exceed 1.5 liters;

(2) Not ship to any address in an area identified by the commissioner as a “dry” or local option area where it is unlawful to sell liquor;

(3) Not ship to any licensed suppliers, distributors, retailers, retail liquor outlets, private clubs, or other licensees licensed under this chapter or §11-16-1 *et seq*. of this code;

(4) Not ship liquor from overseas or internationally;

(5) Ensure that all containers of liquor shipped directly to an adult West Virginia resident are clearly and conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY”;

(6) Not ship to: (i) Any person under the age of 21; (ii) to an intoxicated person; or (iii) to a person physically incapacitated due to the consumption of nonintoxicating beer or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

(7) Obtain a written or electronic signature upon delivery of an adult West Virginia resident who the private direct shipper’s carrier verifies in-person is at least 21 years of age or older, and if the carrier is not able to verify the age, the ordering or purchasing person, and obtain that person’s signature as a verified adult resident at least 21 years of age or older, then the carrier may not complete the delivery of the liquor shipment.

(d) *Payment of Fees and Taxes*.-

(1) Any private direct shipper licensee must collect and remit the entire wholesale markup percentage and any handling fees, in full, as set forth in §60-3A-17 of the code and by rule of the commissioner to the commissioner at the close of each month and file a monthly report, on a form provided by the commissioner.

(2) Further, the private direct shipper licensee shall collect and remit all state sales tax and local sales tax to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments to adult West Virginia residents.

(3) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the private direct shipper’s domicile state.

(4) No private direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(e) *Jurisdiction*. - By obtaining a private direct shipper licensee be deemed to have agreed and consented to the jurisdiction of the commissioner or any other state agency, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports*. –

(1) Licensed private direct shippers must maintain accurate records of all shipments sent to West Virginia residents.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to an adult West Virginia resident 21years of age or older.

(g) The private direct shipper may annually renew its license with the commissioner by application, paying the private direct shipper license fee and providing the commissioner with a true copy of a current distillery license from the private direct shippers domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) *Penalties*. –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private direct shippers license and the commissioner may accept payment of a penalty as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the commissioners discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

(2) If any such distillery violates the provisions of this chapter, the commissioner may determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to an adult West Virginia resident or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive liquor from such person or to have any dealings with such person with respect thereto.

(k) *Criminal Penalties*. – Shipments of liquor directly to citizens in West Virginia from persons who do not possess a valid private direct shippers license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation or shall be imprisoned in jail for a period not to exceed 72 hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

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

A licensed person shall not:

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

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

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the commission;

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

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

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

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

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

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

(A) Upon approval of the limited privilege of a pre-mixed alcohol beverage permit on a “Pre-Mixing Beverage Request form” provided by the commissioner, which shall include, but is not limited to: The licensee’s name; licensee’s license number; licensee’s phone number; licensee’s email address; the name of the beverage to be sold by the licensee; serving size or sizes of the beverage; the quantities in ounces of the wet and dry ingredients (including names and the alcohol by volume percentages of any brand of alcoholic liquors, nonalcoholic mixers, or other ingredients) in the beverage; the beverage recipe; the brand and type of dispensing equipment; the brand and type of storage equipment (not a pitcher, and must be a container that is capable of a proper sealing and that has a preserving mechanism to ensure public health and safety and prevent further brewing, fermenting or distilling of the beverage); a description of the entire process to make, store, and dispense the beverage; any other information the commissioner may reasonably require;

(B) The licensee pays a $100 nonprorated and nonrefundable “Pre-Mixing Beverage Permit” fee per beverage requested for approval, with a maximum of 10 alcoholic beverage permits per licensee;

(C) The licensee must provide certified lab analysis of alcohol by volume percentage of the pre-mixed beverage, lab certification that the pre-mixed beverage is fit for human consumption; and follow the submitted recipe for every batch of an approved pre-mixing beverage, any changes to the recipe must be made prior to the sale of the pre-mixing beverage, or an additional permit must be issued for the new pre-mixing beverage recipe;

(D) The licensee must use the approved dispensing and storage equipment which shall be cleaned by the end of the day, failure to do so shall result in the immediate cancellation of the permit;

(E) The sales volume of the pre-mixing beverage must be at least five gallons per week. Failure to maintain this usage volume will result in the immediate cancellation of the permit, in writing;

(F) The pre-mixing beverage storage equipment must be sanitized and cleaned upon each usage or with each batch made of the beverage;

(G)The pre-mixing beverage may only be made and sold on the licensee’s licensed premises with no sales to other licensees or off of the licensed premises, unless the licensee is also licensed for craft cocktail growler sales;

(~~A)~~(H)The ~~frozen drink~~ pre-mixing beverage dispensing ~~machine~~ equipment ~~is~~ shall be emptied and sanitized daily; and

(~~B)~~(I) That a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment ~~frozen drink machine~~ is maintained for inspection by the commissioner and health inspectors;

(J) Violations of subdivisions (A) through (I), will result in the cancellation of the permit and possibly additional sanctions under this chapter or §11-16-1 *et seq*., of the code;

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

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

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

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

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

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

(a) “Applicant” means a private club applying for a license under the provisions of this article.

(b) “Code” means the official Code of West Virginia, 1931, as amended.

(c) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

(d) “Licensee” means the holder of a license to operate a private club granted under this article, which license shall remain unexpired, unsuspended, and unrevoked.

(e) “Private club” means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans’ organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or (4) is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(f) “Private caterer” means a separately licensed private club restaurant who may apply for a private caterer license in order to cater and serve food, and cater, sell, and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for nonintoxicating beer or nonintoxicating craft beer sales where purchased through required nonintoxicating beer distributors, for wine purchased from wine distributors, or liquor purchased from retail liquor outlets, as applicable, for events at pre-approved unlicensed private venues for an individual or other person hiring the private caterer for food and alcohol services, including, but not limited to, transporting said food and alcohol to and from the pre-approved unlicensed private venue. The private caterer and catering event:

(1) Has at least 10 members and guests attending the catering event;

(2) Has received an open container waiver or has otherwise been approved by a municipality or county where the event is being held;

(3) Operates a private club restaurant on a daily operating basis;

(4) Shall not use party planners, any third-party entities, or other individuals to purchase, sell, furnish, or serve alcoholic liquors;

(5) Shall only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchaser, and the signs of visible, noticeable, and physical intoxication;

(6) Shall provide a list of 10 unlicensed private venues for pre-approval which shall have at least two restrooms, whether permanent or portable, to serve the stated members and guests who will be attending private catering event; provided further that such unlicensed private venues must be inside a building or structure and have an adequate kitchen and other facilities for the selling and serving of prepared food and alcohol, adequate restrooms, and sufficient building facilities for the number of guests attending the private catering event, as determined by the commissioner, and otherwise be in compliance with health, fire, safety, and zoning requirements;

(7) Shall provide a floorplan for each of the 10 unlicensed private venues to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises, the unlicensed private venue’s floorplan during the set time period shall comprise the private caterer’s licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure;

(8) Unlicensed private venues shall be limited to no more than 10 private catering events per annual year, upon reaching the 11th event, the unlicensed venue shall obtain its own private club license.

(9) Unlicensed private venues with a noncontiguous outdoor area may obtain the various special event or fair and festival licenses to permit alcohol and food at an outdoor event.

(10) Meets and be subject to all other private club requirements; and

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

(g) “Private club bar” means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for such sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operates a bar with kitchen, and at least: (i) Two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer (or some combination of the two) which is not used for alcohol cold storage; (iv) maintains kitchen utensils and other food consumption apparatus, as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, $500 of food inventory capable of being prepared in the private club bar’s kitchen, and in calculating the food inventory the commissioner includes television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Utilizes an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and otherwise, such person may not be admitted as a guest; and

(5) Shall meet and be subject to all other private club requirements.

(h) “Private club restaurant” means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area, it may have a bar area separate or commingled with the restaurant, seating requirements for members and guests shall be met by the restaurant area, and the applicant shall meet the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operates a restaurant and full kitchen with at least: (i) Ovens and four-burner ranges; (ii) refrigerators or freezers (or some combination of the two) greater than 50 cubic feet or a walk-in refrigerator or freezer; (iv) other kitchen utensils and apparatus, as determined by the commissioner; and (v) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, $1,000 of fresh food inventory capable of being prepared in the private club restaurant’s full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Utilizes an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian, and provided further that a person under the age of 18 when not accompanied by a parent or legal guardian may dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant as a guest; and

(5) Shall meet and be subject to all other private club requirements.

(i) “Private manufacturer club” means an applicant for a private club or licensed private club licensee who is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer, or nonintoxicating craft beer, respectively, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee’s licensed premises and in the area or areas denoted on the licensee’s floorplan, and further meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Offers tours, complimentary samples, and may offer space as a conference center or for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer (or some combination of the two), and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Maintains, at any one time, $500 of fresh food inventory capable of being prepared in the private manufacturer club’s full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than 20 acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee’s floorplan and would be used for large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists in the application referenced in subdivision (5) of this subsection the entire property and all adjoining buildings and structures on the private manufacturer club’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club’s licensed premises and as noted on the private manufacturer club’s floorplan;

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

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

(9) Shall meet and be subject to all other private club requirements.

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

(1) Has at least 100 members;

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

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

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

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

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

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

(8) Shall meet and be subject to all other private club requirements.

(~~g)~~(k) “Private hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

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

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

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

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

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

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

(9) Shall meet and be subject to all other private club requirements.

(~~h)~~(l) “Private resort hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

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

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

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

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

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

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

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

(9) Shall meet and be subject to all other private club requirements; and

(~~9)~~(10) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

(~~i)~~(m) “Private golf club” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

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

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

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

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

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

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

(8) Shall meet and be subject to all other private club requirements.

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

(1) Has at least 50 members;

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

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

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

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

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

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

(8) Shall meet and be subject to all other private club requirements.

(o) “Private tennis club” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least 4 separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 2 contiguous acres of bounded or fenced real property which would be listed on the private tennis club’s floorplan and could be used for tennis events and large contracted for group-type events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

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

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

(7) Shall meet and be subject to all other private club requirements; and

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

(p) “Private wedding venue or barn” means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and further the applicant shall meet the criteria set forth in this subsection which:

(1) Has at least 25 members;

(2) Maintains a venue, facility, barn, or pavilion primarily for weddings, reunions, conferences, meetings, or other events where parties must reserve the venue, facility, barn, or pavilion in advance of the event;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn, and further, the applicant or licensee shall provide any documentation or agreements of such to the commissioner prior to approval of this food catering arrangement;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property or can verify that if the property is less than two acres that the property is remotely located, as determined by the commissioner, which would be listed on the private wedding venue’s floorplan and could be used for contracted for group-type weddings, reunions, conferences, meetings, or other events;

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

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

(7) Shall meet and be subject to all other private club requirements; and

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

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

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

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans’ organization or a nonprofit social club shall be $750.

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

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

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional $150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee must be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

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

§60-7-8b. One-day charitable rare, antique, or vintage liquor auction; licensee fee and application; license subject to provisions of article; exceptions.

(a) The commissioner may issue a special one-day, one-time, once a year license to a licensed private club in partnership with duly organized, federally approved nonprofit corporations, associations, organizations, or entities allowing the nonprofit to conduct a charitable auction of certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on the private club licensee’s licensed premises for off-premises consumption only, when raising money for athletic, charitable, educational, scientific, or religious purposes. The one-time annual limit applies to the private club and the nonprofit.

(b) “Auction or auctioning”, for the purposes of this section, means any silent, physical act, or verbal bid auction, where such auction requires in-presence bidding at a licensed private club and online internet-based auction bidding, with bidders present at the licensed private club during the nonprofit auction, through a secure internet-based application or website.

(c) *Requirements*.-

(1) The applicants shall jointly complete an application, at least 15 days prior to the event, including, but not limited to, the date, time, place, and floorplan of the charitable event, a signed and notarized statement that at least 80 percent of the gross proceeds from the charitable event will be donated directly to the nonprofit before accounting for the charitable event’s expenses, and such other information as the commissioner may reasonably require. The commissioner may audit and verify the 80 percent requirement.

(2) The applicants must be in good standing with the commissioner and the state, and the applicants must receive the commissioner’s approval prior to the charitable event.

(3) The applicant shall submit and the commissioner shall review the applicants’ list of rare, antique, or vintage liquor, and the applicants must submit paperwork showing that the liquor was purchased from a licensed retail outlet in accordance with §60-3A-1 *et seq.* of this code with all taxes and fees paid for any rare, antique, or vintage liquor with no documentation or not purchased in accordance with §60-3A-1 *et seq*. of this code may be approved for auction, if all taxes and fees are paid to the commissioner in accordance with §60-3A-1 *et seq*. of this code. Any undocumented rare, antique, or vintage liquor approved for charitable auction by the commissioner must be labeled in the interest of public health and safety, “Purchase and consume at your own risk, as the authenticity or source of manufacture of this bottle has not been verified.”

(4) The private club and nonprofit shall not deliver, mail, or ship sealed or unsealed rare, antique, or vintage liquor bottles.

(5) The winning bidder of the auctioned rare, antique, or vintage liquor must pay and receive the sealed rare, antique, or vintage liquor bottle on or before the conclusion of the event.

(6) The applicants shall pay a $250 nonrefundable and nonprorated fee for the license.

(d) *Exceptions*.-

(1) The nonprofit’s charitable auctioning of sealed rare, antique, or vintage liquor bottles, as determined by the commissioner, is permitted on the private club’s licensed premises, notwithstanding the bingo, raffle, and lottery provisions of §47-20-10, §47-21-11, and §61-10-1 *et seq*. of this code, but in compliance with the auction requirements §19-2c-1 *et seq*. of this code;

(2) Provided further, the nonprofit upon licensure by this code section is permitted a limited one-time exception of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-3A-1 *et seq*. of this code in order to sell liquor; and

(3) Provided further, the private club upon licensure by this code section will be provided a limited one-time exception from §60-7-12(a)(1) and §60-6-8(6) of this code, and more specifically §60-6-8(6)(A) of this code, in order to permit the licensed nonprofit to sell via auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, and the carrying onto, the sale of, and the carrying of off the licensed premises such approved sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are subject to all penalties for violations committed under §60-3A-1 *et seq*. of this code and §60-7-1 *et seq*. of this code.

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

(a) There is hereby created a special license designated Class S3 private multivendor fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at an event where multiple vendors shall share liability and apply for this license with each vendor being permitted to temporarily purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

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

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

(2) Have all vendors make application with the commission at least 15 days pursuant to the private fair, festival, or other event;

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

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

(5) Be for a duration of no more than 10 consecutive days and no more than six licenses may be issued to the same person or entity in a calendar year.

(6) Have at least two separate and unrelated vendors applying for the license and certifying that at least 100 members will be in attendance;

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

(8) Not use third-party entities or individuals to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private multivendor festival, fair, or other event;

(10) Provide an agreement between the vendors and executed by all vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, whether a member, patron, or guest is intoxicated, and to provide for the public health and safety of members, patrons, and guests;

(12) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and such floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

(13) Meet and be subject to all other private club requirements; and

(14) Utilize an age verification system approved by the commissioner.

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

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

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

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

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

(h) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(a) Any private club licensee, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in a private outdoor dining area or private outdoor street dining area, as authorized by any municipal council or county commission and any state or county health department who has determined that such areas are legally demarcated by a municipality or county for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(b) The private club licensee must submit the municipal, county, or state or county health department approval of the private outdoor dining area or private outdoor street dining area and a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner’s requirements, in an approved and bounded outdoor area that must be contiguous to the licensee’s licensed premises for private outdoor dining or the bounded area may be non-contiguous to the licensee’s licensed premises, but in close proximity, for private outdoor street dining.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are: (i) Outside and not served by an HVAC system for air handling services and use outside air; (ii) open to the air; (iii) not enclosed by fixed or temporary walls, however, the commissioner may seasonally approve a partial enclosure with up to two temporary or fixed walls; and (iv) not areas where seating is incorporated inside a permanent building with ambient air through HVAC.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with a sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchaser is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-7-8e. Private club restaurant or private manufacturer club licensee’s authority to sell craft cocktail growlers.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities in order to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state’s growing distilling industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

(b) *Sales of craft cocktail growlers*. — A licensed private club restaurant or private manufacturer club who pays the fee in subsection (e) of this section and meets the requirements of this section may offer and sell a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated.

(c) *Retail sales*. — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes*. — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Fees*. — Commencing July 1, 2021, and every July 1 thereafter, there is an annual $100 nonrefundable and nonproratable fee for a craft cocktail growler license. The licensee must be in good standing with the state at the time of paying the fee.

(f) *Advertising*. — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(g) *Craft cocktail growler defined*. – For purposes of this chapter, “Craft Cocktail Growler” means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premise sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise, and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment.

(h) *Craft cocktail growler requirements*. — A licensee licensed under this section must fill a craft cocktail growler and patrons are not permitted to access the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purpose of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) a screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(i) *Craft cocktail growler labeling*. — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, further, all labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) *Craft cocktail growler sanitation*. — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Pre-mixing of craft cocktail*. - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guests purchase of a craft cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein, and also subject to the requirements of this section for a craft cocktail growler.

(l) *Limitations on licensees*. — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchaser is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail growler per order delivered per §60-7-8f. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

(m) *Rules*. — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; requirements; and permit fee.

(a) A licensed private club restaurant or private manufacturer club who is licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler via telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee’s license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process must meet the requirements of this section and penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license when contracted with one or more licensed private club restaurants or private manufacturer clubs who are licensed to sell liquor with nonalcoholic mixers and beverages for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler permitted for off-premises consumption by a third party licensee when a private club or private manufacturer club sells to a person purchasing the craft cocktail growler via telephone, a mobile ordering application, or a web-based software program. The private delivery license nonprorated, nonrefundable fee is $250 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information as reasonably required by the commissioner, including, but not limited to, any third party licensee contracts.

(d) *Sale Requirements*. -

(1) The craft cocktail growler purchase must accompany the purchase of prepared food or a meal of at least $15 in total value, not including gratuity or taxes, and the completion of the sale may be accomplished by the delivery of food or a meal, and craft cocktail growler by the licensee or third party licensee;

(2) Any purchasing person must be 21 years of age or older, must not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) Prepared food or a meal of at least $15 in total value, not including gratuity or taxes, shall for this article mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to one sealed craft cocktail growler for the entire delivery order; and

(5) A third party delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article, therefore a third party private delivery licensee may only charge a convenience fee. No percentage of the delivery order may be collected by the third party private delivery licensee. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Craft Cocktail Growler Delivery Requirements*. -

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler must be 21 years of age or older and each delivery person’s name, driver’s license, and vehicle information must be filed with the commissioner;

(2) Delivery persons must be trained on verifying legal identification and in identifying the signs of intoxication and certification of such training must be submitted to the commissioner;

(3) Each vehicle delivering a craft cocktail growler must be issued a private cocktail delivery permit per subsection (g) of this section;

(4) A food or a meal, and a sealed craft cocktail growler order delivered by a licensed private club restaurant or private manufacturer club may only occur in the county where the licensed private club restaurant or private manufacturer club is located with all sales and municipal taxes accounted for and paid;

(5) A food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee may occur in the county or contiguous counties where the contracted licensed private club restaurant or private manufacturer club is located with all sales and municipal taxes accounted for and paid;

(6) Deliveries of food or a meal, and a sealed craft cocktail growler are only permitted to addresses located in West Virginia;

(7) Deliveries of food or a meal, and a sealed craft cocktail growler are not permitted to any other licensee;

(8) Deliveries of food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(9) Deliveries of food or a meal, and a sealed craft cocktail growler shall not be delivered and left at any address without verifying a person’s age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person and the telephone, mobile ordering application, or web-based software must only permit the actual purchasing person to accept the food and a craft cocktail growler delivery which is subject to verification upon delivery with the delivery person’s visual review and verification and, as applicable, a stored scanned image of the purchasing person’s legal identification;

(2) Any application or web-based software utilized must create a stored record and image of the purchasing person’s legal identification and details of the sale, including the delivery driver’s name and vehicle information;

(3) Any telephone ordering system must maintain a log or record of the purchasing person’s legal identification and details of the sale, including the delivery driver’s name and vehicle information;

(4) All records are subject to inspection by the commissioner, must be retained for five years, and the records may not be unreasonably withheld for the commissioner’s inspection; and

(5) Each vehicle delivering a craft cocktail growler must be issued a private cocktail delivery permit per subsection (g) of this section.

(g) *Private Cocktail Delivery Permit*. -

(1) Each private delivery vehicle, whose driver is 21 years of age or older, must obtain a permit for the delivery of food or a meal, and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A private club restaurant or private manufacturer club licensee must pay a permit fee of $10 per vehicle and provide vehicle and driver information, as reasonably requested by the commissioner. If the private club restaurant or private manufacturer club licensee has obtained a private wine retail transportation permit per §60-8-6e or a retail transportation permit per §11-16-6d of this code, there will not be an additional permit fee for each vehicle. Upon any change in vehicles or drivers, the licensee must update the commissioner immediately.

(3) In conjunction with §60-6-12, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement*. -

(1) The Licensee, the licensee’s employees, or independent contractors and any licensed third party, the licensed third party’s employees, or any independent contractors are responsible for any violations under this article and more than one violation may be issued for a single violation.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and receiving delivery of orders are deemed to be purchasers.

§60-8-6c. Winery and Farm Winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state’s growing wine industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

(b) *Sales of wine*. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery’s licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler when for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples*. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may only offer complimentary samples of wine as set forth in §60-4-3b.

(d) *Retail sales*. — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales shall be subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees*. — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising*. — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the winery or farm winery subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine growler defined*. – For purposes of this section and section §60-8-6d of the code, “Wine Growler” means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of wine for personal consumption not on a licensed premise, and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements*. — A winery or farm winery under this section must fill a wine growler and patrons are not permitted to access the secure area or fill a wine growler. A licensed winery or farm winery under this section must sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling*. — A winery or farm winery under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled, and, further, all labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine growler sanitation*. — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee*. — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but such licensee’s must meet all other requirements.

(l) *Limitations on licensees*. — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery’s principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section shall be subject to the applicable penalties under this article for violations of this section.

(m) *Rules*. — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

Article 8. Sale of Wines.

§60-8-2. Definitions.

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

“Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

“Distributor” means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

“Fortified wine” means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and shall include nonfortified dessert wines ~~which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent~~ where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

“Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than $500 and an average monthly inventory (exclusive of inventory of wine) of not less than $3,000. The term “grocery store” shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than $3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than $3,000.

“Hard Cider” means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

“Hard Cider Distributor” means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed, and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

“Licensee” means the holder of a license granted under the provisions of this article.

“Nonfortified dessert wine” means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent and less than or equal to 17 percent.

“Person” means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

“Private wine bed and breakfast” means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

“Private wine restaurant” means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Such private clubs that meet the private wine restaurant requirements numbered (1), (2), and (3) in this definition shall be considered private wine restaurants.

“Private wine spa” means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may be also a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

“Retailer” means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

“Supplier” means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

“Table wine” means a wine with an alcohol content by volume between 0.5 percent and 14 percent.

“Tax” includes within its meaning interest, additions to tax, and penalties.

“Taxpayer” means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

“Varietal wine” means any wine labeled according to the grape variety from which such wine is made.

“Vintage wine” or “vintage-dated wine” means wines from which the grapes used to produce such wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar and to which no alcohol has been added and shall ~~exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code~~ include table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or embraced within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

“Wine specialty shop” means a retailer who shall deal principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale is for off-premises consumption except where wine tasting or wine sampling is separately authorized by the code.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier’s license;

(2) Two thousand five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer’s license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) One hundred fifty dollars per year for a direct shipper’s license for a licensee who sells and ships only wine and $250 per year for a direct shipper’s license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines; ~~and~~

(12) Three hundred dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine specialty shop shall organize a wine taster’s club, which has at least 50 duly elected or approved dues-paying members in good standing. Such club shall meet on the wine specialty shop’s premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer’s license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such license shall be issued for a term of no longer than 10 consecutive days and the fee for the license shall be $250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair license is the manufacturer of said wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is $50 per festival or fair.

(3) A licensed winery or a farm winery, which has the festival or fair licensee’s written authorization and approval from the commissioner, may, in addition to or in conjunction with the festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during the operation of a festival or fair only; and may sell wine for off-premises consumption only: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m.

(4) A festival or fair license may be issued to a “wine club” as defined in this subdivision for a license fee of $250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club”. The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, “professional baseball stadium” means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur must be surrounded by a fence or other barrier prohibiting entry except upon the franchisee’s express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each professional baseball stadium may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: ~~;and~~ *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: ~~;~~ *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of said wine off premises: *Provided, however*, That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at least $15: *Provided further*, That a licensed private wine restaurant or a private club may offer for sale, for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals, and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any one consumer in one day. Persons serving the complimentary samples must be 21 years of age and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. “Auction or auctioning”, for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not such auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation and association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner’s approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed of three, two-fluid ounce tastings or samples per patron, for consumption on the premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-day licensee’s submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections. No more than six licenses may be issued to any single licensee during any calendar year.

(q) (1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p), an unlicensed winery, regardless of its designation in another state, but that is duly licensed in its domicile state, may pay a $150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity’s name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under sub-section (p); and such other information as the commissioner may reasonably require.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list will create a temporary wine brand registration for up to two special one-day license for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event will provide a signed and notarized agreement where the applicant winery agrees to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted per special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day license for nonprofit events before an additional fee would be paid. In no circumstance would such a winery be permitted to attend more than four special one-day license for nonprofit events per year. Any such applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery’s appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits such a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations noted in this section.

(7) The applicant winery will need to further apply for and receive a transportation permit in order to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that is not otherwise excepted by this sub-section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, “college stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. These sales must take place within the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may occur must be surrounded by a fence or other barrier prohibiting entry except upon the college or university’s express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each the college stadium may require, including, without limitation, the right to revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent to West Virginia adult residents from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or the West Virginia adult residents during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form the Tax Commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month will also subject a supplier, distributor and direct shipper to penalties under §60-8-18 of this code.

No wine imported, sold or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.

§60-8-6d Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee’s authority to sell wine growlers.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state’s growing wine industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

(b) *Sales of wine*. — A licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer wine for retail sale to patrons from their licensed premises in a sealed wine growler for personal consumption only off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated.

(c) *Retail sales*. — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting sales of wine in a wine growler and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes and fees*. — A licensee authorized under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising*. — A licensee authorized under this section may advertise a particular brand or brands of wine and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Wine Growler defined and requirements*. — A licensee authorized under this section must utilize the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

(g) *Wine Growler labeling and sanitation*. — A licensee authorized under this section must label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

(h) *Fees*. — Commencing July 1, 2021, and every July 1 thereafter, there is an annual $100 nonrefundable and nonproratable fee for a wine growler license. The licensee must be in good standing with the state at the time of paying the fee.

(i) *Complimentary samples*. — A licensee authorized under this section may provide complimentary wine growler samples to a person intending to purchase a wine growler which may be no greater than one fluid ounce per wine growler sample and a wine growler sampling shall not exceed three different wine complimentary one fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary wine samples shall prior to any sampling verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. All wine utilized for sampling purposes must be purchased from the licensee’s wine inventory at retail price by the licensee.

(j) *Limitations on licensees*. — A licensee under this section may only sell wine growlers during the hours of operation set forth in this article. Any licensee licensed under this section must maintain a secure area for the sale of wine in a wine growler. The secure area must only be accessible by the licensee. Any licensee licensed under this section shall be subject to the applicable penalties under this article for violations.

(k) *Nonapplicability of certain statutes*. — Notwithstanding any other provision of this article to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a wine growler or providing complimentary wine samples as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the licensee’s licensed premises is subject to penalties under this article.

(l) *Rules*. — The commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; requirements; and permit fee.

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee’s employees to a person purchasing the wine via telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee’s license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section and penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license when contracted with one or more Class A wine licensees who are licensed to sell wine for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine via telephone, a mobile ordering application, or a web-based software program. The private wine delivery license nonprorated, nonrefundable fee is $250 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall require any information as reasonably required by the commissioner, including, but not limited to, any third-party licensee contracts.

(d) *Sale Requirements*. -

(1) The wine purchase must accompany the purchase of prepared food or a meal of at least $15 in total value, not including gratuity or taxes, and the completion of the sale may be accomplished by the delivery of food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person must be 21 years of age or older, must not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of wine.

(3) Prepared food or a meal of at least $15 in total value, not including gratuity or taxes, shall for this article mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to one wine bottle, three wine cans, or one wine growler of wine per ordered meal, but any order, sale, or delivery consisting of multiple meals shall not amount to any combination of wine bottles, wine cans, or sealed wine growlers in excess of 384 fluid ounces of wine, or three wine growlers, for the entire delivery order; and

(5) A third-party delivery licensee shall not have a pecuniary interest in a Class A wine licensee, as set forth in this article, therefore a third-party private wine delivery licensee may only charge a convenience fee. No percentage of the delivery order may be collected by the third-party private wine delivery licensee. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Private Wine Delivery Requirements*. -

(1) Delivery persons employed for the delivery of sealed wine must be 21 years of age older and each delivery person’s name, driver’s license, and vehicle information must be filed with the commissioner;

(2) Delivery persons must be trained on verifying legal identification and in identifying the signs of intoxication and certification of such training must be submitted to the commissioner;

(3) Each vehicle delivering sealed wine must be issued a private wine retail transportation permit per subsection (g) of this section;

(4) Delivery of food or a meal and wine orders by a wine licensee may only occur in the county where the wine licensee is located with all sales and municipal taxes accounted for and paid;

(5) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee may occur in the county or contiguous counties where the contracted wine licensee is located with all sales and municipal taxes accounted for and paid;

(6) Deliveries of food or a meal, and sealed wine are only permitted to addresses located in West Virginia;

(7) Deliveries of food or a meal, and sealed wine are not permitted to any other wine licensees;

(8) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(9) Deliveries of food or a meal, and sealed wine shall not be delivered and left at any address without verifying a person’s age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements*. -

(1) The delivery person and the telephone, mobile ordering application, or web-based software must only permit the actual purchasing person to accept the food or meal, and wine delivery which is subject to verification upon delivery with the delivery person’s visual review and verification and, as applicable, a stored scanned image of the purchasing person’s legal identification;

(2) Any application or web based software utilized must create a stored record and image of the purchasing person’s legal identification and details of the sale, including the delivery driver’s name and vehicle information;

(3) Any telephone ordering system must maintain a log or record of the purchasing person’s legal identification and details of the sale, including the delivery driver’s name and vehicle information;

(4) All records are subject to inspection by the commissioner, must be retained for five years, and the records may not be unreasonably withheld for the commissioner’s inspection; and

(5) Each vehicle delivering wine must be issued a private wine retail transportation permit per subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit*. -

(1) Each private wine delivery vehicle, whose driver is 21 years of age or older, may be permitted for the delivery of food or a meal and wine subject to the requirements of this article.

(2) A Class A wine licensee or a third-party licensee must pay a permit fee of $10 per vehicle and provide vehicle and driver information, as reasonably requested by the commissioner. If a private club restaurant or private manufacturer club has obtained a private cocktail delivery permit per §60-7-8f or a retail transportation permit per §11-16-6d of this code, there will not be an additional permit fee for each vehicle. Upon any change in vehicles or drivers, the licensee must update the commissioner immediately.

(3) In conjunction with §60-6-12, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter, article, and this section.

(h) *Enforcement.* -

(1) The Licensee, the licensee’s employees, or independent contractors and any licensed third-party, the licensed third party’s employees, or any independent contractors are responsible for any violations under this article and more than one violation may be issued for a single violation.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler and subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and receiving delivery of orders are deemed to be purchasers.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

(a) Any Class A wine licensee, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish wine for on-premises consumption on the licensee’s licensed premises in a private wine outdoor dining area or private wine outdoor street dining area, as authorized by any municipal council or county commission and any state or county health department who has determined that such areas are legally demarcated by a municipality or county for the sale and consumption of wine.

(b) The Class A wine licensee must submit the municipal, county, or any state or county health department approval of private wine outdoor dining area or private wine outdoor street dining area and a revised floorplan requesting to sell wine, subject to the commissioner’s requirements, in an approved and bounded outdoor area that must be contiguous to the licensee’s licensed premises for private wine outdoor dining or the bounded outdoor area may be non-contiguous to the licensee’s licensed premises, but in close proximity, for private wine outdoor street dining.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private wine outdoor dining and private wine outdoor street dining include dining areas that are: (i) Outside and not served by an HVAC system for air handling services and use outside air; (ii) open to the air; (iii) not enclosed by fixed or temporary walls, however, the commissioner may seasonally approve a partial enclosure with up to two temporary or fixed walls; and (iv) not areas where seating is incorporated inside a permanent building with ambient air through HVAC.

(e) Class A licensees licensed for on-premises sales must provide food or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code to a patron who is in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers orders-to-go, subject to verification that the purchaser is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions, or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule promulgated or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth below.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee’s license;

(B) Suspend the licensee’s license for a period determined by the commissioner not to exceed 12 months; or

(C) Place the licensee on probation for a period not to exceed 12 months; and

(D) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee’s license.

~~(b) If a supplier or distributor fails or refuses to keep in effect the bond required by §60-8-29 of this article, the commissioner shall automatically suspend the supplier or distributor's license until the bond required by §60-8-20 of this article is furnished to the commissioner, at which time the commissioner shall vacate the suspension~~

~~(c)~~(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

~~(d)~~(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner’s order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a hearing shall give security for the cost of the hearing in a form and amount as the commissioner may reasonably require. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections ~~(g)~~(f) and ~~(h)~~(g) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

~~(e)~~(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review thereof.

~~(f)~~(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

~~(g)~~(f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right of judicial review of the order code in the Circuit Court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, such review shall be conducted in the manner provided in chapter 29A of this code. The petition for the review must be filed with the circuit court within 30 days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying, and transmitting the records pertaining to the matter to circuit court.

~~(h)~~(g) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

~~(i)~~(h) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§60-8-29. ~~Bond~~ Affidavit of compliance required of distributors and suppliers.

Each applicant for a distributor's license or a supplier's license shall furnish at the time of application ~~a bond with a corporate surety authorized to transact business in this State, payable to the State, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article~~. an affidavit of compliance with federal and state laws regarding tied house laws, trade practice requirements, and furnishing things of value requirements set forth in the code and the rules. Further, licensed distributors and suppliers who fail to pay their taxes to the Tax Commissioner or who are not otherwise in good standing with the state and its agencies shall be suspended upon 10 days’ written notice by the commissioner. If the payment of taxes or good standing is not completed in 30 days from the date of suspension of the licensee’s license, then the licensee’s license shall be revoked pursuant to the requirements of this article as it is a privilege to hold a license.

The penal sum of the bond for distributors shall be ten thousand dollars and the penal sum of the bond for suppliers shall be $10,000. Each distributor shall be required to furnish separate bond for each location or separate place of business from which wine is distributed, sold or delivered. Revocation or forfeiture of the bond furnished for any such location may, in the discretion of the commissioner, cause the revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or forfeiture.

Article 8A. Manufacture and Sale of Hard Cider.

§60-8A-1. Definition of Hard Cider.

“Hard Cider” means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or other fruit, or from apple, pear, peach, or other fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

§60-8A-2. Applicability of other laws and licenses.

(a) Except as stated in this article, all wine licenses and other wine requirements set forth in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution, or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(b) Except as stated in this article, all hard cider distributors are bound by all wine requirements set forth in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. No additional hard cider license fees shall be charged for the privilege of distributing hard cider.

§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns; application of state tax law; rulemaking authority.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to West Virginia adult residents from direct shippers, a tax of 22 and six-tenths cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider shall be eligible for such credits in this state against the tax on hard cider. In the case of a person who produces not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine gallons of hard cider which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of this section, the term “wine gallon” means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the hard cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-12 of this code.

(c) Before the 16th day of each month thereafter, every winery, farm winery, supplier, distributor, and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchaser, the quantity, label, and alcoholic content of hard cider sold by the winery, farm winery, and supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during the preceding month and at the same time shall pay the tax imposed by this article on the hard cider sold to the distributor or the West Virginia adult residents during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form the Tax Commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month will also subject a winery, farm winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

(d) No hard cider imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

(e) *Administrative procedures*. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in § 11-10-1 *et seq.* of this code applies to the taxes imposed pursuant to this section, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this section and were set forth in extenso in this article.

(f) *Criminal penalties*. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in § 11-9-1 *et seq*. of this code applies to the taxes imposed pursuant to this section with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

(g) The Tax Commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8A-4. Fruit sources; phase in; applications.

(a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may submit an application to the Agriculture Commissioner with a copy to the commissioner showing its inability to obtain from within this state 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider. The Agriculture Commissioner may issue to the applicant a permit to import such fruit, honey, or fruit juice concentrate in an amount deemed necessary by the Agriculture Commissioner to allow such farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof shall be upon the applicant to show that apples, pears, peaches, honey, or other fruits, of the type normally used by the licensee are not available from any other source within the State of West Virginia, and no application for a permit under this section shall be considered by the commissioner unless it is accompanied by written findings by the Agriculture Commissioner in support thereof.

(c) Notwithstanding any provision in §60-3-25 of this code to the contrary, any permit issued under this section shall be effective for a period of up to five years: *Provided*, That the applicant files an annual statement of necessity, supported by written findings from the Agriculture Commissioner, with the commissioner. After the five-year permit issued pursuant to this section has expired, any subsequent application for a permit shall be submitted pursuant to §60-3-25 of this code.

§60-8A-5. Winery or farm winery licensee’s authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

(a) *Sales of hard cider*. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery’s or farm winery’s licensed premises for consumption off of the licensed premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (b) of this section. “Wine Growler” has the meaning set forth in §60-8-6c(g).

(b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer only complimentary samples of hard cider manufactured at the winery’s or farm winery’s principal place of business or manufacturing facility located in the State of West Virginia. The complimentary samples may be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated.

(c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions as applicable to wine retailers when conducting sales of hard cider and shall be subject to all applicable requirements and penalties.

(d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) *Advertising*. — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler filling services, must meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) *Fee*. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the license fee shall be $50.

§60-8A-6. Rule-making authorization.

The West Virginia Alcoholic Beverage Control Commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this article.

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.

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

NOTE: The purpose of this bill is to provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner, and additionally to provide new licenses to reflect societal requests, by creating: (1) the ability to sell sealed liquor drinks in a craft cocktail, sealed wine, and sealed beer by a Class A licensee or a third party, who obtains a third party delivery license, with a food order utilizing telephone, mobile ordering app, or web based software; (2) a nonintoxicating beer or nonintoxicating beer retail transportation permit, a private wine delivery permit, and craft cocktail delivery permit to transport a food order and beer, wine, and liquor in a vehicle to a purchasing patron; (3) outdoor dining and outdoor street dining areas when authorized by a municipality for beer, wine, and liquor; (4) authorizing in-person or in-vehicle delivery while picking up food and sealed nonintoxicating beer, nonintoxicating craft beer, wine, or craft cocktail growler orders-to-go; (5) an unlicensed brewer or home brewer temporary license to attend a limited number of fairs and festivals in West Virginia and provide nonintoxicating beer to patrons; (6) permitting distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries to operate a private manufacturer club on their licensed premises which can include outdoor spaces; (7) permitting owners of distilleries, mini-distilleries, and micro-distilleries to operate wineries farm wineries, brewers, and resident brewers, and vice versa for wineries and farm wineries; (8) authorizing the direct shipping of liquor to adult West Virginia residents by distilleries, requirements, and license fee; (9) expanded definitions and requirements for pre-mixing alcoholic drinks not in the original container with public health and safety issues addressed; (10) a new license for a private caterer which is already licensed as a private club restaurant to caterer food and alcohol to unlicensed venues with limits; (11) a new license for a private club bar which only provides pre-packaged or basic food in a limited kitchen; (12) a new license for a private club restaurant which provides freshly prepared food in a restaurant style kitchen; (13) a new license for a private tennis club bar where the facility has tennis courts and other grounds which could encompass the licensed premises; (14) a new license for a private wedding venue or barn where food and alcohol are provided on limited basis and the licensee does not operate with daily bar hours; (15) a new license for a limited one-time, once a year license for a charity to conduct a liquor auction in conjunction with a private club and this is limited since the parties are not licensed for liquor sales like a retail liquor outlet; (16) a new license for a multi-vendor fair and festival license where multiple vendors may share liability and responsibility when conducting a joint alcohol event authorized by a municipality; (17) facilitating the economic development of hard cider in West Virginia by reclassifying hard cider in code, establishing a hard cider tax rate; tax collection; creating a new fund for the Agriculture Department to facilitate fruit production for use in hard cider, and additional hard cider requirements; (18) authorizing the ability to sell sealed wine growlers from wineries, farm wineries, and various wine retailers; and (19) and an exemption from the unlawful admission dance hall prohibition for certain licensees utilizing an age verification system. Further, the bill provides for various requirements, licensee fees in certain situations and no additional license fees in certain situations, and penalties.

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