

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

SECOND

ENGROSSMENT

Committee Substitute

for

House Bill 2025

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

[BY REQUEST OF THE EXECUTIVE]

[Originating in the Committee on Government

Organization; February 25, 2021]

1 A BILL to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended, to
2 amend and reenact §11-16-9 and §11-16-18 of said code; to amend said code by adding
3 thereto two new sections, designated §11-16-6d and §11-16-11c; to amend said code by
4 adding thereto two new sections, designated §19-2-12 and §19-2-13; to amend and
5 reenact §60-1-5a of said code; to amend and reenact §60-3A-25 of said code; to amend
6 and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-6-8 of said
7 code; to amend and reenact §60-7-2, §60-7-6, and §60-7-12 of said code; to amend said
8 code by adding thereto five new sections, designated §60-7-8b, §60-7-8c, §60-7-8d, §60-
9 7-8e, and §60-7-8f; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-29
10 and §60-8-34 of said code; to amend said code by adding thereto four new sections,
11 designated §60-8-6c, §60-8-6d, §60-8-6e, and §60-8-32a; to amend said code by adding
12 thereto a new article, designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and
13 §60-8A-6; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating
14 beer, nonintoxicating craft beer, liquor, wine, and hard cider sales in this state; providing
15 for the authority and license to deliver nonintoxicating beer or nonintoxicating craft beer
16 with requirements, no additional fee for certain licensees, a license fee for third parties,
17 and a nonintoxicating beer retail transportation permit with requirements; providing certain
18 licensees with the authority for nonintoxicating beer, nonintoxicating craft beer, outdoor
19 dining, and outdoor street dining; authorizing in-person or in-vehicle pick up of purchased
20 food and nonintoxicating beer or nonintoxicating beer orders-to-go; creating an unlicensed
21 brewer or home brewer temporary license for use at fairs and festivals, requirements, and
22 a license fee; providing for changing the beginning time for nonintoxicating beer,
23 nonintoxicating craft beer, liquor, and wine sales to begin at 6:00 a.m. on all days; relating
24 to the manufacture and sale of hard cider and wine by establishing the Agriculture
25 Development Fund; establishing permitted expenditures from the Agriculture
26 Development Fund; creating a new program to develop hard cider; providing for wine

27 definitions; clarifying various aspects of wine, specifically the alcohol by volume
28 percentage for table wine, wine, and fortified wine; adding the definition of “nonfortified
29 dessert wine”; authorizing licensed liquor retail licensees to sell sealed bottles of liquor
30 through a window of a drive-in or drive-through; creating a private manufacturer club
31 license for distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries,
32 requirements, and a license fee; authorizing distilleries, mini-distilleries, and micro-
33 distilleries to also operate wineries, farm wineries, brewers, and resident brewers;
34 authorizing wineries and farm wineries to also operate as distilleries, mini-distilleries,
35 micro-distilleries, brewers, and resident brewers; authorizing the ability to pre-mix
36 alcoholic liquors, establishing certain requirements, and creating a permit; creating private
37 caterer license, requirements, and license fee; creating a private club bar license,
38 requirements, and license fee; creating a private club restaurant license, requirements,
39 and license fee; creating a private manufacturer club license, requirements, and license
40 fee; authorizing a private club licensee to sell sealed bottles of liquor from a window of a
41 drive-in or drive-through; authorizing a distillery, mini-distillery, or micro-distillery to also
42 obtain a winery or farm winery license; authorizing a winery or farm winery to also obtain
43 a distillery, mini-distillery, or micro-distillery license; creating a private tennis club license,
44 requirements, and license fee; creating a private wedding venue or barn license,
45 requirements, and license fee; creating a one-day charitable rare, antique, or vintage
46 liquor auction license for charitable purposes, requirements, and license fee; creating a
47 private multi-vendor fair and festival license, requirements, and license fee; providing for
48 a reduction of certain fees; creating private outdoor dining and private outdoor street dining
49 areas as legally demarcated areas that are not a public place; authorizing and creating
50 craft cocktail growlers and requirements, and a private cocktail delivery permit; authorizing
51 in-person or in-vehicle pick up of purchased food and craft cocktail growler orders-to-go;
52 clarifying penalties for failure to meet wine licensure requirements; replacing wine bond

53 requirements that secure the payment of taxes by distributors, suppliers, certain wineries,
54 and certain farm wineries, who are acting as either suppliers or distributors in a limited
55 capacity, with an affidavit of compliance; providing penalties for failure to pay taxes and
56 maintain good standing with the state; authorizing wineries and farm wineries to sell wine
57 growlers and establishing requirements; authorizing certain Class A and Class B licensees
58 to sell wine growlers and establishing requirements; creating the authority and license to
59 deliver wine with a private wine delivery license, requirements, no additional fee for certain
60 licensees, a license fee for third parties, and a private wine retail transportation permit and
61 requirements; creating private wine outdoor dining and private wine outdoor street dining
62 areas as legally demarcated areas that are not a public place; authorizing in-person or in-
63 vehicle pick up of purchased food and wine orders-to-go; providing that there is no
64 separate license required to manufacture and sell hard cider under certain conditions;
65 providing for a hard cider distributor's license and permitting other current and valid
66 licensees to distribute hard cider without an additional license fee; providing for hard cider
67 exemptions to the wine liter tax; establishing a hard cider gallon tax; providing for the
68 application of West Virginia Tax Procedures and Administration Act and West Virginia Tax
69 Crimes and Penalties Act to the hard cider gallon tax; providing for an internal effective
70 date; providing for a tax credit against the hard cider tax; providing for applicability of other
71 laws; requiring regular reports to the Tax Commissioner; providing for applications to
72 import products necessary to manufacture hard cider under certain conditions; providing
73 for hard cider sales for consumption on the licensed premises; providing for complimentary
74 samples to be offered; establishing requirements for complimentary samples; permitting
75 the sale of wine growlers; establishing wine growler requirements, in certain
76 circumstances; and providing additional exceptions to the criminal penalty for the unlawful
77 admission of children to dance house for certain private clubs with approved age
78 verifications systems.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after ~~4:00~~ 6:00 a.m. on Sundays.

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

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

20 [] Yes [] No

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

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

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

**§11-16-6d. 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; and requirements.**

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

13 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales
14 or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
15 for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer
16 or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed
17 growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating
18 beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A
19 retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer
20 through telephone orders, a mobile ordering application, or a web-based software program. The
21 nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$100 per third party entity,
22 with no limit on the number of drivers and vehicles. The delivery license fee under this subsection
23 may not be prorated nor refunded.

24 (c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall
25 comply with licensure requirements in §11-16-8 of this code and shall require any information set
26 forth in this article and as reasonably required by the commissioner.

27 (d) Sale Requirements. -

28 (1) The nonintoxicating beer or nonintoxicating craft beer purchase must accompany the
29 purchase of prepared food or a meal and the completion of the sale may be accomplished by the
30 delivery of food or meal and nonintoxicating beer or nonintoxicating craft beer by the licensee or
31 third party licensee;

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

35 (3) Prepared food or a meal shall for purposes of this article mean food that has been
36 cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched,
37 sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged
38 food from the manufacturer;

39 (4) An order, sale, and delivery may consist of up to a 30-pack of bottles or cans, or one
40 sealed growler of nonintoxicating beer or nonintoxicating craft beer per ordered meal, but any
41 order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles,
42 cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating
43 craft beer; and

44 (5) A third party delivery licensee shall not have a pecuniary interest in a Class A retail
45 dealer, as set forth in this article, therefore a third party delivery licensee may only charge a
46 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The
47 third party licensee may not collect a percentage of the delivery order for the delivery of alcohol,
48 but may continue to collect a percentage of the delivery order directly related to food or a meal.
49 The convenience fee charged by the third party delivery licensee to the purchasing person may
50 not be greater than five dollars per delivery order where nonintoxicating beer or nonintoxicating
51 craft beer are ordered by the purchasing person. For any third party licensee also licensed for
52 wine growler delivery as set forth in §60-8-6c of the code or craft cocktail growler delivery as set
53 forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed
54 growler, wine growler, or craft cocktail growler shall not exceed five dollars.

55 (e) Delivery Requirements. -

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

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

61 (3) The third party delivery licensee or Class A retail dealer must hold a retail transportation
62 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft
63 beer pursuant to §11-16-6d(g) of this code;

64 (4) Delivery of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft
65 beer orders by a third party delivery licensee or Class A retail dealer may occur in the county or
66 contiguous counties where the Class A retail dealer is located;

67 (5) Deliveries of food or a meal, and sealed nonintoxicating beer or nonintoxicating craft
68 beer are only permitted to addresses located in West Virginia with all sales and municipal taxes
69 accounted for and paid;

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

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

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

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

78 (1) The delivery person must only permit the person who placed the order through
79 telephone, mobile ordering application, or web-based software to accept the food or a meal, and
80 nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon
81 delivery with the delivery person's visual review and age verification and, as applicable, a stored
82 scanned image of the purchasing person's legal identification;

83 (2) Any application or web-based software utilized must create a stored record and image
84 of the purchasing person's legal identification and details of the sale, accessible by the delivery
85 person for verification, and must include the delivery driver's name and vehicle information;

86 (3) Any telephone ordering system must maintain a log or record of the purchasing
87 person's legal identification and details of the sale, accessible by the delivery person for
88 verification, and must include the delivery driver's name and vehicle information;

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

92 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be
93 issued a retail transportation permit per §11-16-6d(g) of this code.

94 (g) Retail Transportation Permit. -

95 (1) A third party delivery entity or Class A retail dealer must obtain for each delivery
96 vehicle, whose driver is 21 years of age or older, a retail transportation permit for the delivery of
97 food or a meal, and nonintoxicating beer or nonintoxicating craft beer subject to the requirements
98 of this article.

99 (2) A Class A retail dealer or a third party licensee must apply for a permit and provide
100 vehicle and driver information, as reasonably requested by the commissioner. Upon any change
101 in vehicles or drivers, the licensee must update the vehicle and driver information with the
102 commissioner immediately.

103 (h) Enforcement. -

104 (1) The licensee or the licensed third party are responsible for any violations committed
105 by their employees or independent contractors under this article, and more than one violation may
106 be issued for a single violation involving multiple licensees, employees, or independent
107 contractors.

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

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

113 (4) For purposes of criminal enforcement of the provisions of this article, persons ordering,
114 purchasing, or accepting 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.

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

13 (b) The annual license fees are as follows:

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

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

20 Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to
21 sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All
22 other Class A licenses ~~authorize the licensee~~ licensees are authorized to sell nonintoxicating beer
23 or nonintoxicating craft beer at retail, as licensed, for consumption on the licensed premises or off
24 the licensed premises. Class A licensees may sell nonintoxicating beer or nonintoxicating craft

25 beer for consumption off the licensed premises when in a sealed original container and sold for
26 personal use, and not for resale. Class A licensees must provide food or meals along with sealed
27 nonintoxicating beer or nonintoxicating craft beer in the original container or in a sealed growler
28 as set forth for sales and service in §11-16-6d of this code to a patron who is in-person or in-
29 vehicle picking up food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer
30 orders-to-go, subject to verification that the purchaser is 21 years of age or older, and not visibly
31 or noticeably intoxicated, and as otherwise specified in this article.

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

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

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

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

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

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

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

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

59 (4) For a brewer whose principal place of business or manufacture is not located in this
60 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections
61 (c), (d),₂ and (e) of this section: *Provided*, That a brewer whose principal place of business or
62 manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating
63 beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be
64 subject to the variable license fees of subdivision (3), subsection (b) of this section and the
65 requirements set out in subsections (c), (d),₂ and (e) of this section subject to investigation and
66 approval by the commissioner as to brewer requirements.

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

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

75 (d) On or before July 15 of each year, every brewer,₁ or resident brewer who is granted a
76 license shall file a final report, on a form provided by the commissioner, that is dated as of June

77 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
78 barrels and gallons produced at its principal place of business and manufacture during the prior
79 year.

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

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

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

94 (h) Notwithstanding subsections (a) and (b) of this section a Class A retail dealer, in good
95 standing with the commissioner, may apply, on a form provided by the commissioner, to sell,
96 serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption
97 in an outdoor dining area or outdoor street dining area, as authorized by any municipal council or
98 county commission and any state or county health department. The Class A retail dealer must
99 submit the municipal council, county commission, or any state or county health department
100 approval and a revised floorplan requesting to sell and serve nonintoxicating beer or
101 nonintoxicating craft beer, subject to the commissioner's requirements, in an approved outdoor
102 area that must be contiguous to the licensee's licensed premises for nonintoxicating beer or

103 nonintoxicating craft beer outdoor dining or that may be noncontiguous to the licensee's licensed
104 premises, but in close proximity, for nonintoxicating beer or nonintoxicating craft beer outdoor
105 street dining. For purposes of this section, "close proximity" means an available area within 500
106 feet of the licensee's licensed premises. Nonintoxicating beer or nonintoxicating craft beer outdoor
107 dining or outdoor street dining may be operated in conjunction with a private outdoor dining or
108 private outdoor street dining area set forth in §60-7-8d of this code and private wine outdoor dining
109 or private wine outdoor street dining set forth in §60-8-32a of this code.

110 (i) For purposes of this article, nonintoxicating beer or nonintoxicating craft beer outdoor
111 dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining includes dining
112 areas that are:

113 (1) Outside and not served by an HVAC system for air handling services and use outside
114 air;

115 (2) Open to the air; and

116 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
117 approve a partial enclosure with up to three temporary or fixed walls.

118 Any area where seating is incorporated inside a permanent building with ambient air
119 through HVAC is not considered outdoor dining pursuant to this subsection.

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

1 (a) An unlicensed brewer or home brewer may obtain a temporary license upon meeting
2 the requirements set forth in this section to offer its nonintoxicating beer or nonintoxicating craft
3 beer for sampling and sales at a licensed fair and festival set forth in §11-16-11 and §11-16-11b
4 of this code when granted approval of the licensee holding the fair and festival license. The
5 unlicensed brewer or home brewer are exempt from the requirements of registering the brand
6 and utilizing a distributor and a franchise agreement due to the limited nature of this temporary
7 license.

8 (b) An unlicensed brewer or home brewer shall be subject to the same limits, taxes, fees,
9 requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner
10 may, by rule or order, provide for certain waivers or exceptions with respect to the provisions,
11 rules, or orders as the circumstances of each festival or fair may require, including, without
12 limitation, the right to revoke or suspend any license issued pursuant to this section prior to any
13 notice or hearing, notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided*,
14 however, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and
15 §11-16-8(a)(3) of this code be waived nor shall any exception be granted with respect to those
16 provisions.

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

26 (2) The unlicensed brewer or home brewer application shall include, but is not limited to,
27 the person or entity's name, address, taxpayer identification number, and location; if an
28 unlicensed brewer or home brewer, a copy of its licensure in its domicile state and good standing;
29 a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer
30 or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing
31 with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol
32 analysis for the nonintoxicating beer or nonintoxicating craft beer it desires to temporarily provide
33 for samples and temporarily sell as nonintoxicating beer or nonintoxicating craft beer to a licensee

34 licensed under §11-16-11 and §11-16-11b of this code; and such other information as the
35 commissioner may reasonably require.

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

44 (4) An applicant that receives this temporary special license for any event licensed under
45 §11-16-11 and §11-16-11b of this code will provide a signed and notarized agreement where the
46 applicant acknowledges it is the applicant's responsibility to pay all municipal, local, and sales
47 taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

48 (5) An application must be submitted for each special license sought for an event licensed
49 under §11-16-11 and §11-16-11b of this code that the applicant desires to attend, and the license
50 fee shall cover up to two separate one-day licenses for an event licensed under §11-16-11 and
51 §11-16-11b of this code before an additional fee would be required. Any such applicant desiring
52 to attend more than four events per year or otherwise operate in West Virginia would need to seek
53 appropriate licensure as a brewery or resident brewery in this state.

54 (6) Notwithstanding the provisions of this article and requirements for licensure, brand
55 registration, franchise requirements, payment of beer barrel tax, and the appointment of a
56 distributor franchise network, this temporary special license for an event licensed under §11-16-
57 11 and §11-16-11b of this code, once granted, permits such a licensee to operate in this limited
58 capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this
59 code subject to the limitations noted in this section.

60 (7) The applicant will need to further apply for and receive a nonintoxicating beer or
61 nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer
62 or nonintoxicating craft beer in the state per §11-16-10(f) of this code; *Provided*, That an additional
63 fee for a nonintoxicating beer or nonintoxicating craft beer transportation permit may not be
64 collected or charged to an applicant seeking a temporary license under this section.

65 (8) The applicant licensed by this section is subject to all applicable violations and/or
66 penalties under this article and the legislative rules that are not otherwise excepted by this section:
67 *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions
68 with respect to the provisions, rules, or orders as the circumstances of each festival or fair may
69 require, including, without limitation, the right to revoke or suspend any license issued pursuant
70 to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-
71 16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-
72 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
73 granted with respect to those provisions.

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

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

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

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

18 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
19 nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist
20 to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing
21 herein contained in this section prohibits a licensee from crediting to a purchaser the actual price
22 charged for packages or containers returned by the original purchaser as a credit on any sale, or
23 from refunding to any purchaser the amount paid or deposited for the containers when title is
24 retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if
25 the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the
26 nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the
27 distributor shall initiate the transfer no later than noon of one business day after the delivery;

28 (5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs,
29 supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee
30 engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or
31 other similar inducement, except advertising matter, including indoor electronic or mechanical
32 signs, of nominal value up to \$25.00 per stock keeping unit, to either trade or consumer buyers:
33 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*,
34 That, in the interest of public health and safety, a distributor may, independently or through a
35 subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and
36 cleaning services to a licensed retailer so long as the furnishing or sale of draught line services
37 may be negotiated at no less than direct cost: *Provided, further*, That a distributor may furnish,

38 rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a
39 subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail
40 under the conditions and within the limitations as prescribed herein. Nothing contained in this
41 section prohibits a brewer from sponsoring any professional or amateur athletic event or from
42 providing prizes or awards for participants and winners in any events.

43 (6) For any brewer or distributor to sponsor any professional or amateur athletic event or
44 provide prizes or awards for participants and winners when a majority of the athletes participating
45 in the event are minors, unless specifically authorized by the commissioner;

46 (7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines
47 where the draught lines have not been cleaned at least every two weeks in accordance with rules
48 promulgated by the commissioner, and where written records of all cleanings are not maintained
49 and available for inspection;

50 (8) For any licensee to permit in his or her premises any lewd, immoral, or improper
51 entertainment, conduct, or practice;

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

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

63 (11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in
64 the sale, possession, or consumption of any alcoholic liquors on the premises covered by a
65 license or on premises directly or indirectly used in connection with it: *Provided*, That the
66 prohibition contained in this subdivision with respect to the selling or possessing or to the
67 acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with
68 respect to the holder of a license to operate a private club issued under the provisions of §60-7-
69 1 *et seq.* of this code nor shall the prohibition be applicable to a private wine restaurant licensed
70 under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is
71 authorized to serve wine;

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

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

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

83 (15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating
84 beer except in the original container;

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

87 (17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his
88 or her licensed premises;

89 (18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for
90 any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any
91 person less than 18 years of age to loiter in or upon any licensed premises; except, however, that
92 the provisions of this subdivision do not apply where a person under the age of 18 years is in or
93 upon the premises in the immediate company of his or her parent or parents, or where and while
94 a person under the age of 18 years is in or upon the premises for the purpose of and actually
95 making a lawful purchase of any items or commodities sold, or for the purchase of and actually
96 receiving any lawful service rendered in the licensed premises, including the consumption of any
97 item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the
98 premises;

99 (19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer
100 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating
101 beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose
102 principal place of business or licensed premises is within the assigned territory of another
103 distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to
104 prohibit sales of convenience between distributors licensed in this state where one distributor
105 sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale;
106 and

107 (20) For any licensee or any agent, servant, or employee of any licensee to knowingly
108 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of
109 chapter 29A of this code.

110 (b) Any person who violates any provision of this article, including, but not limited to, any
111 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
112 makes any false statement concerning any material fact in submitting an application for a license
113 or for a renewal of a license or in any hearing concerning the revocation of a license, or who
114 commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and,

115 upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor
116 more than \$500, or confined in the county or regional jail for not less than 30 days nor more than
117 six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the
118 circuit court and any other courts having criminal jurisdiction in their county for the trial of all
119 misdemeanors arising under this article.

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

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

122 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of
123 any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the
124 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
125 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
126 or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of
127 nonintoxicating beer to an individual who is less than 21 years of age by one of his or her
128 employees, servants, or agents. Any agent, servant, or employee who has improperly sold,
129 furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject
130 to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who
131 has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21
132 years of age is subject to termination from employment, and the employer shall have no civil
133 liability for the termination.

134 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each
135 employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is
136 sold by providing evidence: (A) That it has developed a written policy which requires each
137 employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will
138 be sold, furnished, or given away; (B) that it has communicated this policy to each employee,
139 servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents

140 regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken
141 corrective action for any discovered noncompliance with this policy.

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

147 (d) Nothing in this article nor any rule of the commissioner shall prevent or be considered
148 to prohibit any licensee from employing any person who is at least 18 years of age to serve in the
149 licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this
150 article. With the prior approval of the commissioner, a licensee whose principal business is the
151 sale of food or consumer goods, or the providing of recreational activities, including, but not limited
152 to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores,
153 discount stores, grocery stores, and convenience stores, may employ persons who are less than
154 18 years of age but at least 16 years of age: *Provided*, That the person's duties may not include
155 the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however*, That the
156 authorization to employ persons under the age of 18 years shall be clearly indicated on the
157 licensee's license.

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-12. Agriculture Development Fund; administration; purpose; funding.

1 (a) There is hereby created in the State Treasury a special revenue account to be known
2 as the Agriculture Development Fund. The fund shall be administered by the Department of
3 Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of
4 this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;

5 any moneys appropriated and designated for the fund by the Legislature; any moneys able to be
6 transferred into the fund by authority of the commissioner from other funds; and gifts, donations,
7 and interest or other returns earned from investment of the fund.

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

§19-2-13. Hard cider development program; purpose; funding.

1 The commissioner shall establish a program to foster the development and growth of the
2 hard cider industry in the state. The purpose of the program shall be to assist in the development
3 of fruit inputs necessary for the production of hard cider in the state. The program shall be funded
4 using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12
5 of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 (a) For the purpose of this chapter “Farm winery” means an establishment where in any
2 year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are
3 manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other
4 fruits or honey, or other agricultural products containing sugar and where port, sherry and Madeira
5 wine may also be manufactured, with 25 percent of such raw products being produced by the
6 owner of such farm winery on the premises of that establishment and no more than 25 percent of
7 such produce originating from any source outside this state. Any port, sherry or Madeira wine

8 manufactured by a winery or a farm winery must not exceed an alcoholic content of 22 percent
9 alcohol by volume and shall be matured in wooden barrels or casks.

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

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-25. Certain acts of retail licensee prohibited; criminal penalties.

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

3 (1) Sell or offer for sale any liquor other than from the original package or container;

4 (2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to
5 any person under 21 years of age;

6 (3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to
7 any person visibly intoxicated;

8 (4) Sell or offer for sale any liquor other than during the hours permitted for the sale of
9 liquor by retail licensees as provided under this article;

10 (5) Permit the consumption by any person of any liquor;

11 (6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand
12 name of any liquor;

13 (7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other
14 person;

15 (8) Purchase or otherwise obtain liquor in any manner or from any source other than that
16 specifically authorized in this article; or

17 (9) Permit any person to break the seal on any package or bottle of liquor.

18 (b) Any person who violates any provision of this article, except section 24 of this article,
19 including, but not limited to, any provision of this section, or any rule promulgated by the board or
20 the commissioner, or who makes any false statement concerning any material fact, or who omits
21 any material fact with intent to deceive, in submitting an application for a retail license or for a
22 renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or
23 who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor
24 and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than
25 \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both
26 fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses
27 under this article.

28 (c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits
29 any retail licensee from employing any person who is at least 18 years of age to serve in any retail
30 licensee's lawful employment at any retail outlet operated by such retail licensee, or from having
31 such person sell or deliver liquor under the provisions of this article. With the prior approval of the
32 commissioner, a retail licensee may employ persons at any retail outlet operated by such retail
33 licensee who are less than 18 years of age but at least 16 years of age, but such persons' duties
34 shall not include the sale or delivery of liquor: *Provided*, That the authorization to employ such
35 persons under the age of 18 years shall be clearly indicated on the retail license issued to any
36 such retail licensee.

37 (d) Any licensee with a current and valid license to sell sealed bottles of liquor is authorized
38 to sell or permit the sale of alcoholic liquors or fortified wine through a window at a drive-in or
39 drive-through retail establishment.

ARTICLE 4. LICENSES.

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

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

17 (b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or
18 micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16,
19 §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-
20 26 of this code and the provisions of §60-3-1 et seq., and §60-4-1 et seq., of this code applicable
21 to liquor retailers and distillers. Notwithstanding any other provision of law to the contrary, a
22 licensed distillery, mini-distillery, or micro-distillery may sell for off-premises consumption
23 alcoholic liquors beginning at 6:00 a.m. on any day of the week unless otherwise determined by
24 the residents of the county pursuant to §7-1-3ss of this code.

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

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

42 (e) ~~*Limitations on licensees.* — No distillery, mini-distillery, or micro-distillery may sell more~~
43 ~~than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location the initial~~
44 ~~two years of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the~~
45 ~~distillery, mini-distillery, micro-distillery location by 2,000 gallons following the initial 24 month~~
46 ~~period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery~~
47 ~~location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year~~
48 ~~of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery~~
49 ~~may produce more than 50,000 gallons per calendar year at the mini-distillery location. No~~
50 ~~licensed micro-distillery may produce more than 10,000 gallons per calendar year at the micro-~~

51 ~~distillery location. No more than one distillery or mini-distillery license may be issued to a single~~
52 ~~person or entity and no person may hold both a distillery and a mini-distillery license~~ The owners
53 of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery,
54 brewery, or as a resident brewer as otherwise specified in the code.

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

1 (a) An operator of a winery or farm winery may offer wine produced by the winery, farm
2 winery, or a farm entity authorized by §60-1-5c of this code for retail sale to customers from the
3 winery or farm winery for consumption off the premises only. Customers may consume wine on
4 the premises when an operator of a winery or farm winery offers ~~Except for free complimentary~~
5 ~~samples offered pursuant to §60-6-1 of this code, the winery or farm winery is licensed as a private~~
6 ~~wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. customers~~
7 Customers are prohibited from consuming any wine on the licensed premises of the winery, farm
8 winery, or a farm entity authorized by §60-1-5c of this code unless such winery, farm winery, or
9 farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That a licensed
10 winery or farm winery may offer complimentary samples per this subsection of wine manufactured
11 by that licensed winery or farm winery for consumption on the premises only on Sundays
12 beginning at ~~4:00~~ 6:00 a.m. in any county in which the same has been approved as provided in
13 §7-1-3ss of this code. Notwithstanding any other provision of law to the contrary, a licensed winery
14 or farm winery may sell, serve, and furnish for on-premises consumption wine beginning at 6:00
15 a.m. and/or for off-premises consumption wine beginning at 6:00 a.m. on any day of the week
16 unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

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

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

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

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

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

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

33 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
34 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
35 §60-8-1 *et seq.* of this code.

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

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

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

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

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

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

63 (j) (k) For purposes of this section, terms will have the same meaning as provided in §8-
64 13-7 of this code.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

1 A licensed person shall not:

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

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

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

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

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

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

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

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

24 (7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original
25 container: *Provided*, That a licensee, in good standing with the commissioner, is authorized under
26 a current and valid license to may sell, furnish, tender, and serve pre-mixed beverages consisting
27 of alcoholic liquors, and nonalcoholic mixer, ~~and ice~~ if:

28 (A) Upon approval of the privilege of a pre-mixed alcohol beverage permit on a "Pre-Mixing
29 Beverage Request" form provided by the commissioner, which may include, information
30 reasonably required by the commissioner, each applicant shall furnish at the time of application

31 an affidavit of compliance with federal and state laws regarding public health and safety standards
32 and that the licensee follows all laws and regulations of this state;

33 (B) The licensee must identify, apply for, and submit all necessary information on the "Pre-
34 Mixing Beverage Permit" form, which allows a licensee to offer a maximum of 25 pre-mixed
35 alcoholic beverage recipes;

36 (C) The licensee must use approved dispensing and storage equipment which shall be
37 cleaned by the end of the day. Failure to clean the dispensing and storage equipment shall result
38 in the immediate cancellation of the permit;

39 (D) The pre-mixing beverage storage equipment must be sanitized and cleaned upon each
40 usage or after each batch of the beverage is made;

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

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

46 (G) A violation or violations of §60-6-8(7)(A) through §60-6-8(7)(F), may result in the
47 cancellation of the permit and could possibly result in additional sanctions under this chapter or
48 §11-16-1 et seq., of the code;

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

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

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

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

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

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

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

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

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

9 (e) "Private club" means any corporation or unincorporated association which either: (1)
10 Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is
11 operated exclusively for the benefit of its members, which pays no part of its income to its
12 shareholders or individual members, which owns or leases a building or other premises to which
13 club are admitted only duly elected or approved dues-paying members in good standing of the
14 corporation or association and their guests while in the company of a member and to which club
15 the general public is not admitted, and which club maintains in the building or on the premises a
16 suitable kitchen and dining facility with related equipment for serving food to members and their
17 guests; or (2) is a nonprofit social club, which is operated exclusively for the benefit of its
18 members, which pays no part of its income to its shareholders or individual members, which owns

19 or leases a building or other premises to which club are admitted only duly elected or approved
20 dues-paying members in good standing of the corporation or association and their guests while
21 in the company of a member and to which club the general public is not admitted, and which club
22 maintains in the building or on the premises a suitable kitchen and dining facility with related
23 equipment for serving food to members and their guests; or (3) is organized and operated for
24 legitimate purposes which has at least 100 duly elected or approved dues-paying members in
25 good standing, which owns or leases a building or other premises, including any vessel licensed
26 or approved by any federal agency to carry or accommodate passengers on navigable waters of
27 this state, to which club are admitted only duly elected or approved dues-paying members in good
28 standing of the corporation or association and their guests while in the company of a member and
29 to which club the general public is not admitted, and which club maintains in the building or on
30 the premises a suitable kitchen and dining facility with related equipment and employs a sufficient
31 number of persons for serving meals to members and their guests; or (4) is organized for
32 legitimate purposes and owns or leases a building or other delimited premises in any state, county
33 or municipal park or at any airport, in which building or premises a club has been established, to
34 which club are admitted only duly elected and approved dues-paying members in good standing
35 and their guests while in the company of a member and to which club the general public is not
36 admitted, and which maintains in connection with the club a suitable kitchen and dining facility
37 and related equipment and employs a sufficient number of persons for serving meals in the club
38 to the members and their guests.

39 (f) "Private caterer" means a separately licensed private club restaurant that may apply for
40 a private caterer license in order to cater and serve food, and cater, sell, and serve alcoholic
41 liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for nonintoxicating
42 beer or nonintoxicating craft beer sales where purchased through required nonintoxicating beer
43 distributors, for wine purchased from wine distributors, or liquor purchased from retail liquor
44 outlets, as applicable, for events at unlicensed private venues for an individual or other person

45 hiring the private caterer for food and alcohol services, including, but not limited to, transporting
46 food and alcohol to and from the unlicensed private venue. The private caterer and catering event:

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

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

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

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

54 (5) Shall provide to the commissioner, at least 15 days before the event is to take place:

55 (A) The name and business address of the unlicensed private venue the private caterer is
56 to provide food and alcohol for a catering event;

57 (B) The name of the owner or operator of the unlicensed private venue;

58 (C) The all contracts between the private caterer, the person contracting with the caterer,
59 and the unlicensed private venue;

60 (D) A floorplan of the unlicensed private venue to comprise the private catering premises,
61 which shall only include spaces in buildings or rooms of an unlicensed private venue where the
62 private caterer has control of the space for a set time period where the space safely accounts for
63 the ingress and egress of the stated members and guests who will be attending the private
64 catering event at the catering premises. The unlicensed private venue's floorplan during the set
65 time period as stated in the contract shall comprise the private caterer's licensed premises, which
66 is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating
67 beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises;

68 Provided, That the unlicensed private venue must: (i) be inside a building or structure, (ii) have
69 other facilities to prepare and serve food and alcohol, (iii) have adequate restrooms, and sufficient

70 building facilities for the number of guests expected to attend the private catering event, and (iv)
71 otherwise be in compliance with health, fire, safety, and zoning requirements;

72 (6) Unlicensed private venues may not hold more than 15 private catering events per
73 calendar year. Upon reaching the 16th event, the unlicensed venue must obtain its own private
74 club license;

75 (7) Unlicensed private venues with a noncontiguous outdoor area may submit to the
76 commissioner, evidence that the noncontiguous area is within 500 feet of the licensed
77 establishment and may submit a floorplan extension for authorization to permit alcohol and food
78 at an outdoor event;

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

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

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

86 (1) Has at least 100 members;

87 (2) Operates a bar with kitchen, including at least: (A) Two-burner hot plate, air fryer, or
88 microwave oven; (B) a sink with hot and cold running water; (C) a 17 cubic foot refrigerator or
89 freezer, or some combination of a refrigerator and freezer, which is not used for alcohol cold
90 storage; (D) maintains kitchen utensils and other food consumption apparatus, as determined by
91 the commissioner; and (E) food fit for human consumption available to be served during all hours
92 of operation on the licensed premises;

93 (3) Maintains, at any one time, \$500 of food inventory capable of being prepared in the
94 private club bar's kitchen. In calculating the food inventory, the commissioner must include

95 television dinners, bags of chips or similar products, microwavable food or meals, frozen meals,
96 prepackaged foods, or canned prepared foods;

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

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

102 (h) "Private club restaurant" means an applicant for a private club or licensed private club
103 licensee that has a primary function for the use of the licensed premises as a restaurant for serving
104 freshly prepared meals and dining in the restaurant area. The private club restaurant may have a
105 bar area separate from or commingled with the restaurant, seating requirements for members
106 and guests must be met by the restaurant area, and the applicant for a private restaurant club
107 license shall meet the criteria set forth in this subsection which:

108 (1) Has at least 100 members;

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

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

118 (4) Utilizes an age verification system approved by the commissioner for the purpose of
119 verifying that persons under 18 years of age who are in the bar area of a private club restaurant
120 are accompanied by a parent or legal guardian, and that a person under the age of 18 years,

121 when not accompanied by a parent or legal guardian, may not be seated in the bar area but may
122 dine for food and nonalcoholic beverage purposes in the restaurant area of a private club
123 restaurant as a guest; and

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

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

131 (1) Has at least 100 members;

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

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

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

142 (5) Owns or leases, controls, operates, and uses acreage amounting to at least one acre
143 which is contiguous bounded or fenced real property that would be listed on the licensee's
144 floorplan and may be used for large events such as weddings, reunions, conferences, meetings,
145 and sporting or recreational events;

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

153 (7) Identifies a person, persons, an entity, or entities who or which has right, title, and
154 ownership or lease interest in the real property, buildings, and structures located on the proposed
155 licensed premises;

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

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

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

161 (1) Has at least 100 members;

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

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

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

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

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

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

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

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

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

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

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

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

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

194 (6) Lists in the application referenced in subdivision (5) of this subsection the entire
195 property and all adjoining buildings and structures on the private hotel's floorplan which would
196 comprise the licensed premises, which would be authorized for the lawful sales, service, and

197 consumption of alcoholic liquors throughout the licensed premises whether these activities were
198 conducted in a building or structure or outdoors while on the private hotel's licensed premises and
199 as noted on the private hotel's floorplan;

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

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

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

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

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

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

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

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

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

220 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining
221 buildings and structures on the private resort hotel's floorplan which would comprise the licensed
222 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic

223 liquors throughout the licensed premises whether these activities were conducted in a building or
224 structure or outdoors while on the private resort hotel's licensed premises and as noted on the
225 private resort hotel's floorplan;

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

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

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

230 ~~(9)(10)~~ May have a separately licensed resident brewer with a brewpub license inner-
231 connected via a walkway, doorway, or entryway, all as determined and approved by the
232 commissioner, for limited access during permitted hours of operation for tours and complimentary
233 samples at the resident brewery.

234 ~~(j)~~(m) "Private golf club" means an applicant for a private club or licensed private club
235 licensee meeting the criteria set forth in this subsection which:

236 (1) Has at least 100 members;

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

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

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

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

249 structure or outdoors while on the private golf club's licensed premises and as noted on the private
250 golf club's floorplan;

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

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

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

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

257 (1) Has at least 50 members;

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

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

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

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

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

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

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

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

279 (1) Has at least 100 members;

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

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

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

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

294 (6) Has identified a person, persons, an entity, or entities who or which has right, title, and
295 ownership interest in the real property buildings and structures located on the proposed licensed
296 premises;

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

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

299 (p) "Private wedding venue or barn" means an applicant for a private club or licensed
300 private club licensee that is only open for reserved weddings, reunions, conferences, meetings,

301 or other events and does not maintain daily or regular operating hours, and further the applicant
302 shall meet the criteria set forth in this subsection which:

303 (1) Has at least 25 members;

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

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

313 (4) Owns or leases, controls, operates, and uses acreage amounting to at least two
314 contiguous acres of bounded or fenced real property. If the applicant or licensee can verify that,
315 if the property is less than two acres, the property is remotely located, as determined by the
316 commissioner. The bounded or fenced real property may be listed on the private wedding venue's
317 floorplan and could be used for large events such as weddings, reunions, conferences, meetings,
318 or other events;

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

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

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

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

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

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

1 (a) The annual license fee for a license issued under the provisions of this article to a
2 fraternal or veterans' organization or a nonprofit social club shall be ~~\$750~~ \$100.

3 (b) The annual license fee for a license issued under the provisions of this article to a
4 private club other than a private club of the type specified in subsection (a) of this section shall be
5 ~~\$1,000~~ \$500 if the private club bar or restaurant has fewer than 1,000 members, ~~\$250 for private~~
6 club restaurant to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the
7 private club is a private wedding venue or barn; \$2,000 ~~\$1,000~~ if the private club is a private nine-
8 hole golf course, private manufacturer club, or private tennis club as defined in §60-7-2 of this
9 code; ~~\$2,500~~ \$1,000 if the private club bar or private club restaurant has 1,000 or more members,
10 ~~\$4,000~~ \$1,500 if the private club is a private hotel with three or fewer designated areas or a private
11 golf club as defined in §60-7-2 of this code, and further, if the private club is a private resort hotel
12 as defined in §60-7-2 of this code, said private resort hotel may designate areas within the
13 licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided
14 for by this article. The annual license fee for a private resort hotel with five or fewer designated
15 areas shall be ~~\$7,500~~ \$2,000, and the annual license fee for a private resort hotel with at least six
16 but no more than 10 designated areas shall be ~~\$12,500~~ \$3,000. The annual license fee for a
17 private resort hotel with at least 11 but no more than 15 designated areas shall be ~~\$17,500~~ \$4,000.
18 The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated

19 areas shall be ~~\$22,500~~ \$5,000: *Provided*, That a private resort hotel having obtained the license
20 and paid the ~~\$22,500~~ \$5,000 annual license fee may, upon application to and approval of the
21 commissioner, designate additional areas for a period not to exceed seven days ~~for an additional~~
22 ~~fee of \$150 per day, per designated area~~; *Provided, however, That a private resort hotel may,*
23 *upon approval of the commissioner and which such approval may not be unreasonably withheld,*
24 *enter into an installment plan agreement to pay the annual license fee in, equal installments over*
25 *the course of the year in lieu of an annual payment.*

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

29 (d) A licensee that fails to complete a renewal application and make payment of its annual
30 license fee in renewing its license on or before June 30 of any subsequent year, after initial
31 application, shall be charged an additional ~~\$150~~ \$15 reactivation fee. *Any private resort hotel that*
32 *fails to pay the full amount of its license before June 30 of any year may not be permitted to enter*
33 *into an installment plan agreement, as determined by the commissioner, in addition to an*
34 *additional \$15 reactivation fee.* The fee payment may not be prorated or refunded, and the
35 reactivation fee must be paid prior to the processing of any renewal application and payment of
36 the applicable full year annual license fee. A licensee who continues to operate upon the
37 expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and
38 §60-7-13a of this code, all as determined by the commissioner.

39 (e) All such fees shall be paid by the commissioner to the State Treasurer and credited to
40 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.**

1 (a) The commissioner may issue a special one-day, license to a licensed private club in
2 partnership with one or more duly organized, federally approved nonprofit corporations,

3 associations, organizations, or entities allowing the nonprofit to conduct a charitable auction of
4 certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on
5 the private club licensee's licensed premises for off-premises consumption only, when raising
6 money for athletic, charitable, educational, scientific, or religious purposes.

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

11 (c) Requirements.-

12 (1) The applicants shall jointly complete an application, at least 15 days prior to the event.
13 The application may require, but is not limited to, information relating to the date, time, place,
14 floorplan of the charitable event, and such other information as the commissioner may require.
15 The applicants must include with the application a signed and notarized statement that at least
16 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit.
17 The commissioner may audit to verify the 80 percent requirement.

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

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

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

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

33 (6) The applicants shall pay a \$150 nonrefundable and nonprorated fee for the license.

34 (d) Exceptions.-

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

39 (2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception
40 of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-
41 3A-1 et seq. of this code to sell liquor; and

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

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

1 (a) There is hereby created a special license designated Class S3 private multivendor fair
2 and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating
3 craft beer for on-premises consumption at an event where multiple vendors shall share liability

4 and apply for this license with each vendor being permitted to temporarily purchase, sell, furnish,
5 or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

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

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

10 (2) Jointly apply with the commission at least 15 days prior to the private fair, festival, or
11 other event;

12 (3) Pay a nonrefundable nonprorated license fee of \$500 total per event and may be
13 divisible among all the vendors attending the event;

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

16 (5) Be limited to no more than 15 consecutive days;

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

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

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

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

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

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

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

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

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

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

48 (d) Wine sold, furnished, tendered, or served pursuant to the license created by this
49 section shall be purchased from a licensed distributor, winery, or farm winery in accordance with
50 §60-8-1 et seq. of this code.

51 (e) Liquor sold, furnished, tendered, or served pursuant to the license created by this
52 section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous

53 market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-
54 3A-1 et seq. of this code.

55 (f) A licensee authorized by this section may utilize bona fide employees, independent
56 contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer,
57 or nonintoxicating craft beer; *Provided*, That all employees, independent contractors, or
58 volunteers are trained to verify legal identification and to verify signs of intoxication.

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

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

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

1 (a) Any private club licensee, in good standing with the commissioner, may apply, on a
2 form provided by the commissioner, to sell, serve, and furnish alcoholic liquors, and when licensed
3 for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating
4 craft beer for on-premises consumption from a temporary area, legally demarcated, that would
5 permit sales of nonintoxicating beer or nonintoxicating craft beer in a private outdoor dining area

6 or private outdoor street dining area, as legally demarcated any municipal council or county
7 commission for the sale and consumption of alcoholic liquors and nonintoxicating beer or
8 nonintoxicating craft beer.

9 (b) The private club licensee must submit: (1) the municipal or county approval of the
10 private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan
11 requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating
12 craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's
13 requirements, in an approved and bounded outdoor area that must be contiguous to the licensee's
14 licensed premises for private outdoor dining or the bounded area may be non-contiguous to the
15 licensee's licensed premises, but in close proximity, for private outdoor street dining. For purposes
16 of this subsection, "close proximity" means an available area within 500 feet of a licensee's
17 licensed premises.

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

22 (d) For purposes of this section, private outdoor dining and private outdoor street dining
23 include dining areas that are:

24 (1) Outside and not served by an HVAC system for air handling services and use outside
25 air;

26 (2) Open to the air; and

27 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
28 approve a partial enclosure with up to three temporary or fixed walls.

29 Any area where seating is incorporated inside a permanent building with ambient air
30 through HVAC is not considered outdoor dining pursuant to this subsection.

31 (e) A private club restaurant or a private manufacturer club licensed for craft cocktail
32 growler sales must provide food or a meal along with a sealed craft cocktail growler sales as set
33 forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and
34 a sealed craft cocktail growler order-to-go, subject to verification that the purchaser is 21 years of
35 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.**

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

9 (b) Sales of craft cocktail growlers. — A licensed private club restaurant or private
10 manufacturer club is authorized under a current and valid license and meets the requirements of
11 this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four
12 fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire
13 beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a
14 sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to
15 the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing
16 the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably
17 intoxicated.

18 (c) Retail sales. — Every licensee licensed under this section shall comply with all the
19 provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with

20 markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler
21 sales, and shall be subject to all applicable requirements and penalties in this article.

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

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

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

39 (h) *Craft cocktail growler requirements.* — A licensee licensed under this section must
40 prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to
41 fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal,
42 and label any craft cocktail growler prior to its sale. A licensee licensed under this section may
43 refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under
44 this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee
45 licensed under this section may not fill or refill any craft cocktail growler that appears to be

46 cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purpose
47 of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat
48 shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form
49 a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks
50 apart when the craft cocktail growler is opened.

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

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

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

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

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

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

11 (b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery
12 license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a
13 craft cocktail growler license. The order and delivery of a sealed craft cocktail growler permitted
14 for off-premises consumption by a third party licensee when a private club or private manufacturer
15 club sells to a person purchasing the craft cocktail growler through telephone orders, a mobile
16 ordering application, or a web-based software program. The private delivery license nonprorated,
17 nonrefundable fee is \$100 per third party entity, with no limit on the number of drivers and vehicles.

18 (c) The private delivery license application shall comply with licensure requirements in this
19 article and shall require any information as reasonably required by the commissioner; *Provided,*
20 That the license application may not require a third party applicant to furnish information pursuant
21 to §60-7-12 of this code.

22 (d) *Sale Requirements.* -

23 (1) The craft cocktail growler purchase must accompany the purchase of prepared food
24 or a meal and the completion of the sale may be accomplished by the delivery of food or a meal,
25 and craft cocktail growler by the licensee or third party licensee;

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

30 (3) Prepared food or a meal shall, for this article, mean food that has been cooked, grilled,
31 fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other
32 manner freshly made and prepared, and does not include pre-packaged food from the
33 manufacturer.

34 (4) An order, sale, and delivery may consist of up to three sealed craft cocktail growlers
35 for each order of food or meal; *Provided,* That the entire delivery order may not contain more than
36 128 fluid ounces total; and

37 (5) A third party delivery licensee shall not have a pecuniary interest in a private club
38 restaurant or private manufacturer club licensee, as set forth in this article, therefore a third party
39 private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The
40 third party delivery licensee may not collect a percentage of the delivery order for the delivery of
41 alcohol, but may continue to collect a percentage of the delivery order directly related to food or
42 a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing
43 person shall be no greater than five dollars per delivery order where a craft cocktail growler is
44 ordered by the purchasing person. For any third party licensee also licensed for wine growler
45 delivery as set forth in §60-8-6c of the code or nonintoxicating beer or nonintoxicating craft beer
46 growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale,
47 and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five
48 dollars.

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

50 (1) Delivery persons employed for the delivery of a sealed craft cocktail growler must be
51 21 years of age or older and each delivery person's name, driver's license, and vehicle information
52 must be filed with the commissioner;

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

55 (3) The third party delivery licensee or the private club restaurant or private manufacturing
56 club must hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler
57 pursuant to subsection (g) of this section;

58 (4) A food or a meal, and a sealed craft cocktail growler order delivered by a third party
59 private delivery licensee, a private club restaurant, or private manufacturer club may occur in the
60 county or contiguous counties where the licensed private club restaurant or private manufacturer
61 club is located;

62 (5) Deliveries of food or a meal, and a sealed craft cocktail growler are only permitted to
63 addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

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

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

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

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

72 (1) The delivery person must only permit the person who placed the order through
73 telephone order, mobile ordering applicant, or web-based software to accept the food and a craft
74 cocktail growler delivery which is subject to verification upon delivery with the delivery person's
75 visual review and verification and, as applicable, a stored scanned image of the purchasing
76 person's legal identification;

77 (2) Any application or web-based software utilized must create a stored record and image
78 of the purchasing person's legal identification and details of the sale, accessible by the delivery
79 driver for verification, and must include the delivery driver's name and vehicle information;

80 (3) Any telephone ordering system must maintain a log or record of the purchasing
81 person's legal identification and details of the sale, accessible by the delivery driver for
82 verification, and must include the delivery driver's name and vehicle information;

83 (4) All records are subject to inspection by the commissioner. Records must be retained
84 for five years, and the records may not be unreasonably withheld for the commissioner's
85 inspection; and

86 (5) The third party delivery licensee or the private club restaurant or private manufacturing
87 club must hold a valid private cocktail delivery permit per subsection (g) of this section for each
88 vehicle that may offer delivery.

89 (g) Private Cocktail Delivery Permit. -

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

93 (2) A third party private delivery licensee, a private club restaurant, or private manufacturer
94 club licensee must provide vehicle and driver information, as reasonably requested by the
95 commissioner. Upon any change in vehicles or drivers, the licensee must update the driver and
96 vehicle information with the commissioner as soon as possible.

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

100 (h) Enforcement. -

101 (1) The licensee or the licensed third party are responsible for any violations committed
102 by their employees or independent contractors under this article, and more than one violation may
103 be issued for a single violation involving multiple licensees, employees, or independent
104 contractors.

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

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

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

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

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

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

5 (2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper
6 entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine,
7 multiple coin console slot machine, or device in the nature of a slot machine; however, various
8 games, gaming, and wagering conducted by duly licensed persons of the West Virginia State
9 Lottery Commission, charitable bingo games conducted by duly licensed charitable or public
10 service organization (or its auxiliaries), pursuant to §47-20-1 *et seq.* of this code, and charitable
11 raffle games conducted by a duly licensed charitable or public service organization (or its
12 auxiliaries), pursuant to §47-21-1 *et seq.* of this code, all of which are permissible on a licensee's
13 licensed premises when operated in accordance with this code, rules, and regulations: *Provided,*
14 That a private resort hotel holding a license issued pursuant to §60-7-1 *et seq.* of this code, may
15 sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises
16 licensed under §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code, during
17 hours of operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of
18 this code;

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

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

26 (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any
27 licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m.
28 and ~~7:00~~ 6:00 a.m. on weekdays, ~~or Saturdays, and Sundays, between the hours of 3:00 a.m.~~
29 ~~and 10:00 a.m. on any Sunday~~ or, between the hours of 3:00 a.m. and 1:00 p.m. in any county
30 upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

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

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

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

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

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

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

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

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

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

54 (d) Any licensee with a current and valid license to sell sealed bottles of liquor is authorized
55 under to sell or permit the sale of alcoholic liquors or fortified wine through a window at a drive-in
56 or drive-through retail establishment.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control
4 Commissioner.

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

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

23 “Grocery store” means any retail establishment, commonly known as a grocery store,
24 supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies
25 for the table are sold for consumption off the premises with average monthly sales (exclusive of
26 sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of
27 wine) of not less than \$3,000. The term “grocery store” shall also include and mean a separate
28 and segregated portion of any other retail store which is dedicated solely to the sale of food, food
29 products, and supplies for the table for consumption off the premises with average monthly sales
30 with respect to such separate or segregated portion (exclusive of sales of wine) of not less than
31 \$3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than \$3,000.

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

38 “Hard Cider Distributor” means any person whose principal place of business is within the
39 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but
40 not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine
41 restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code
42 and maintains a warehouse in this state for the distribution of hard cider, but not other types of
43 wine. For the purpose of a hard cider distributor, the term “person” means and includes an

44 individual, firm, trust, partnership, limited partnership, limited liability company, association, or
45 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor
46 licensee, and the trustee, or any other person or persons in active control of the activities of the
47 trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to
48 the distributor license that are unlawful acts or violations of this article, notwithstanding the liability
49 of trustees in §44D-10-1 et seq. of this code.

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

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

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

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

66 “Private wine restaurant” means a restaurant which: (1) Is a partnership, limited
67 partnership, corporation, unincorporated association, or other business entity which has as its
68 principal purpose the business of serving meals on its premises to its members and their guests;
69 (2) is licensed under the provisions of this article as to all of its premises or as to a separate

70 segregated portion of its premises to serve wine to its members and their guests when such sale
71 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
72 paying members and their guests while in the company of a member and does not admit the
73 general public. Such private clubs that meet the private wine restaurant requirements numbered
74 (1), (2), and (3) in this definition shall be considered private wine restaurants.

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

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

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

91 “Table wine” means a wine with an alcohol content by volume between 0.5 percent and
92 14 percent.

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

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

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

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

101 “Wine” means any alcoholic beverage obtained by the natural fermentation of the natural
102 content of grapes, other fruits, or honey or other agricultural products containing sugar and to
103 which no alcohol has been added and shall ~~exclude fortified wine and shall also exclude any~~
104 ~~product defined as or embraced within the definition of nonintoxicating beer under the provisions~~
105 ~~of article sixteen, chapter eleven of this code~~ include table wine, hard cider, nonfortified dessert
106 wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product
107 defined as or embraced within the definition of nonintoxicating beer under the provisions of §11-
108 16-1 et seq., of this code are excluded from this definition of wine.

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

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

1 (a) No person may engage in business in the capacity of a winery, farm winery, supplier,
2 distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (13) Two hundred fifty dollars per year for a hard cider distributor's license and each
50 separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider
51 shall be separately licensed and there shall be collected with respect to each location the annual
52 license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a

53 nonintoxicating beer or nonintoxicating beer distributor then there will be no additional license fee
54 to distribute hard cider.

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

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

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

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

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

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

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

88 (3) A licensed winery or a farm winery, which has the festival or fair licensee's written
89 authorization and approval from the commissioner, may, in addition to or in conjunction with the
90 festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed
91 three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during
92 the operation of a festival or fair only; and may sell wine for off-premises consumption only:
93 *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings,
94 samples and off-premises sales shall occur under the hours of operation as required in this article,
95 except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of
96 2:00 a.m. and ~~4:00~~ 6:00 a.m.

97 (4) A festival or fair license may be issued to a "wine club" as defined in this subdivision
98 for a license fee of \$250. The festival or fair committee or the governing body shall designate a
99 person to organize a club under a name which includes the name of the festival or fair and the
100 words "wine club". The license shall be issued in the name of the wine club. A licensee may not
101 commence the sale of wine as provided in this subdivision until the wine club has at least 50 dues-
102 paying members who have been enrolled, and to whom membership cards have been issued.
103 Thereafter, new members may be enrolled and issued membership cards at any time during the

104 period for which the license is issued. A wine club licensed under the provisions of this subdivision
105 may sell wine only to its members, and in portions not to exceed eight ounces per serving. The
106 sales shall take place on premises or in an area cordoned or segregated so as to be closed to
107 the general public, and the general public shall not be admitted to the premises or area. A wine
108 club licensee under the provisions of this subdivision may serve complimentary samples of wine
109 in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper
110 where the wine may be consumed on the licensed premises of any Class A private wine retail
111 license or private club. A wine club which violates the provisions of this subdivision is subject to
112 the penalties in this article.

113 (5) A licensed winery or farm winery approved to participate in a festival or fair under the
114 provisions of this section and the licensee holding the license, or the licensed winery or farm
115 winery approved to attend a licensed festival or fair, is subject to all other provisions of this article
116 and the rules and orders of the commissioner relating to the license: *Provided*, That the
117 commissioner may by rule or order provide for certain waivers or exceptions with respect to the
118 provisions, rules, or orders as the circumstances of each festival or fair may require, including,
119 without limitation, the right to revoke or suspend any license issued pursuant to this section prior
120 to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code:
121 *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-
122 20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

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

125 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in
126 subsection (q) of this section may conduct the same sampling and sales set forth in subsection
127 (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and
128 festival license and temporary and limited licensure by the commissioner. An unlicensed winery
129 shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in

130 subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for
131 certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances
132 of each festival or fair may require, including, without limitation, the right to revoke or suspend any
133 license issued pursuant to this section prior to any notice or hearing notwithstanding the
134 provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances
135 shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception
136 be granted with respect to those subsections.

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

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

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

165 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
166 restaurant, private wine spa, or a private club under the provisions of this article entitles the
167 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale
168 accompanies the serving of food or a meal to its members and their guests in accordance with
169 the provisions of this article; ~~and~~ *Provided*, That a licensed private wine bed and breakfast, private
170 wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to
171 purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to
172 two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its
173 members and their guests in accordance with the provisions of this article and in accordance with
174 rules promulgated by the commissioner for the purpose of consumption of said wine off premises:
175 *Provided, however*, ~~That for this article, food or a meal provided by the private licensee means~~
176 ~~that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at~~
177 ~~least \$15; *Provided further*, That a licensed private wine restaurant or a private club may offer for~~
178 sale, for consumption off the premises, sealed bottles of wine to its customers provided that no
179 more than one bottle is sold per each person over 21 years of age, as verified by the private wine
180 restaurant or private club, for consumption off the premises. Such licensees are authorized to

181 keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of
182 operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code.
183 A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer
184 as provided by §11-16-1 *et seq.* of this code.

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

189 (l) The commissioner shall propose rules for promulgation in accordance with the
190 provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals, and to
191 sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section.
192 Each licensed restaurant is authorized to make such sales under a current and appropriate
193 license and may not be charged an additional fee ~~shall be charged an additional \$100 per year~~
194 ~~fee.~~

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

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

199 (o) A wine specialty shop under this article may also hold a wine sampling license
200 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
201 specialty shop location during regular hours of business. The wine specialty shop may serve up
202 to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any
203 one consumer in one day. Persons serving the complimentary samples must be 21 years of age
204 and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a
205 representative of a distributor or registered supplier. Distributor and supplier representatives
206 attending wine sampling events must be registered with the commissioner. No licensee,

207 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to
208 any person less than 21 years of age or to a person who is physically incapacitated due to the
209 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and
210 secure permission from the commissioner for all wine sampling events ~~one month~~ 30 days prior
211 to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must
212 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

213 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
214 corporations and associations allowing the sale and serving of wine, and may, if applicable, also
215 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,
216 when raising money for athletic, charitable, educational, or religious purposes. "Auction or
217 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid
218 auction, whether or not such auction requires in-presence bidding or online Internet-based
219 electronic bidding through a secure application or website, but shall not include any action in
220 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall
221 contain information required by the commissioner and shall be submitted to the commissioner at
222 least 30 days prior to the event. Accompanying the license application the applicant must submit
223 a signed and notarized statement that at least 80 percent of the gross proceeds from the
224 charitable event will be donated directly to the nonprofit before accounting for the charitable
225 event's expenses. Wines used during these events may be donated by, or purchased from, a
226 licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is
227 authorized in writing by a representative of the duly organized, nonprofit corporation and
228 association which has obtained the one-day license; is in good standing with the state; and obtains
229 the commissioner's approval prior to the one-day license event may, in conjunction with the one-
230 day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~of~~ three, two-
231 fluid ounce tastings or samples per patron, for consumption on the premises during the operation
232 of the one-day license event; and may sell certain sealed wine bottles manufactured by the

233 licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery
234 or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall
235 occur under the hours of operation as required in this article, except on Sunday, tastings, samples,
236 and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m., from
237 the one-day licensee's submitted floor plan for the event subject to the requirements in the code
238 and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code
239 be waived nor may any exception be granted with respect to those subsections. ~~No more than six~~
240 ~~licenses may be issued to any single licensee during any calendar year.~~

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

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

256 (3) The applicant winery shall include a list of all wines proposed to be temporarily sampled
257 and temporarily sold in sealed containers at a special one-day license for a nonprofit event so
258 that the wines may be reviewed in the interest of public health and safety. Once approved, the

259 submitted wine list will create a temporary wine brand registration for up to two special one-day
260 license for a nonprofit event for no additional fee.

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

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

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

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

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

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

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

309 college or university, so that the wine sales area is closed to free and unrestricted entry by the
310 general public.

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

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

§60-8-4. Liter tax.

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

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

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

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

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

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

9 (b) Sales of wine. — A licensed winery or farm winery with its principal place of business
10 and manufacture located in the State of West Virginia may, when licensed under this section,
11 offer only wine manufactured by the licensed winery or farm winery for retail sale to customers
12 from the winery or farm winery's licensed premises for consumption off of the licensed premises
13 only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed
14 wine growler for personal consumption, and not for resale. A licensed winery or farm winery may
15 not sell, give, or furnish wine for consumption on the premises of the principal place of business
16 and manufacture located in the State of West Virginia, except for the limited purpose of

17 complimentary samples as permitted in subsection (c) of this section or unless separately licensed
18 as a private wine restaurant or a private manufacturer club.

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

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

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

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

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

43 cap or lid of wine growler to form a seal that must be broken when the container is opened; or (2)
44 A screw top cap or lid that breaks apart when the wine growler is opened.

45 (h) Wine Growler requirements. — A winery or farm winery licensed under this section
46 must prevent patrons from accessing the secure area where the winery or farm winery will fill a
47 wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery
48 under this section must sanitize, fill, securely seal, and label any wine growler prior to its sale. A
49 licensed winery or farm winery under this section may refill a wine growler subject to the
50 requirements of this section. A winery or farm winery shall visually inspect any wine growler before
51 filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to
52 be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

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

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

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

67 (l) Limitations on licensees. — To be authorized under this section, a licensed winery or
68 farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery

69 or farm winery's principal place of business and manufacture located in the State of West Virginia.
70 A licensed winery or farm winery authorized under this section shall be subject to the applicable
71 penalties under this article for violations of this section.

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

§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.

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

11 (b) Sales of wine. — A licensed wine retailer, wine specialty shop, private wine restaurant,
12 private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer
13 club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this
14 section and meets the requirements of this section may offer wine for retail sale to patrons from
15 their licensed premises in a sealed wine growler for personal consumption off of the licensed
16 premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification,

17 that any patron purchasing wine is 21 years of age or over and that the patron is not visibly
18 intoxicated.

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

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

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

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

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

34 (h) *Complimentary samples.* — A licensee authorized under this section may provide
35 complimentary wine growler samples to a person intending to purchase a wine growler which may
36 be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall
37 not exceed three complimentary two fluid ounce samples per patron per day. A licensee
38 authorized under this section providing complimentary wine samples shall, prior to providing any
39 samples, verify that the patron sampling wine is 21 years of age or older and that the patron is
40 not visibly or noticeably intoxicated.

41 (i) *Limitations on licensees.* — A licensee under this section may only sell wine growlers
42 during the hours of operation set forth in this article. Any licensee licensed under this section must

43 maintain a secure area for the sale and filling of wine in a wine growler. The secure area must
44 only be accessible by the licensee. Any licensee licensed under this section shall be subject to
45 the applicable penalties under this article for violations.

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

51 (k) *Rules.* — The commissioner is authorized to propose rules for legislative approval,
52 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; and requirements.

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

11 (b) A third party, not licensed for wine sales or distribution, may apply for a private wine
12 delivery license for the privilege of ordering and delivery of wine in the original container of sealed
13 bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order

14 and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is
15 permitted for off-premises consumption by a third party licensee when sold by a Class A wine
16 licensee to a person purchasing the wine through telephone orders, a mobile ordering application,
17 or a web-based software program. The private wine delivery license nonprorated, nonrefundable
18 fee is \$100 per third party entity, with no limit on the number of drivers and vehicles.

19 (c) The private wine delivery license application shall comply with licensure requirements
20 in this article and shall require any information as reasonably required by the commissioner.

21 (d) Sale Requirements. -

22 (1) The wine purchase must accompany the purchase of prepared food or a meal and the
23 completion of the sale may be accomplished by the delivery of food or a meal, and sealed wine
24 by the licensee or third-party licensee.

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

28 (3) Prepared food or a meal shall, for this article, mean food that has been cooked, grilled,
29 fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other
30 manner freshly made and prepared, and does not include pre-packaged food from the
31 manufacturer.

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

37 (5) A third-party delivery licensee shall not have a pecuniary interest in a Class A wine
38 licensee, as set forth in this article, therefore a third-party private wine delivery licensee may only
39 charge a convenience fee for the delivery of wine. The third-party licensee may not collect a

40 percentage of the delivery order for the delivery of alcohol but may continue to collect a
41 percentage of the delivery order directly related to food or a meal. The convenience fee charged
42 by the third-party private wine delivery licensee to the purchasing person shall be no greater than
43 five dollars per delivery order where wine is ordered by the purchasing person. For any third-party
44 licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as
45 set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the
46 code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler,
47 or craft cocktail growler shall not exceed five dollars.

48 (e) *Private Wine Delivery Requirements.* -

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

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

54 (3) The third party delivery licensee or Class A wine licensee must hold a retail
55 transportation permit for each vehicle delivering sealed wine per subsection (g) of this section;

56 (4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery
57 licensee or Class A wine licensee may occur in the county or contiguous counties where the wine
58 licensee is located;

59 (5) Deliveries of food or a meal, and sealed wine are only permitted to addresses located
60 in West Virginia with all sales and municipal taxes accounted for and paid;

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

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

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

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

68 (1) The delivery person must only permit person who placed the order through telephone,
69 mobile ordering application, or web-based software to accept the food or meal, and wine delivery
70 which is subject to age verification upon delivery with the delivery person's visual review and
71 verification and, as applicable, a stored scanned image of the purchasing person's legal
72 identification;

73 (2) Any application or web-based software utilized must create a stored record and image
74 of the purchasing person's legal identification and details of the sale, accessible by the delivery
75 driver for verification, and must include the delivery driver's name and vehicle information;

76 (3) Any telephone ordering system must maintain a log or record of the purchasing
77 person's legal identification and details of the sale, accessible by the delivery driver for
78 verification, and must include the delivery driver's name and vehicle information;

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

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

83 (g) Private Wine Retail Transportation Permit. -

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

86 (2) A Class A wine licensee or a third-party licensee must provide vehicle and driver
87 information, as reasonably requested by the commissioner. Upon any change in vehicles or
88 drivers, the licensee must update the driver and vehicle information with the commissioner as
89 soon as possible.

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

93 (h) Enforcement. -

94 (1) The licensee or the licensed third party are responsible for any violations committed
95 by their employees or independent contractors under this article, and more than one violation may
96 be issued for a single violation involving multiple licensees, employees, or independent
97 contractors.

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

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

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

**§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.**

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

5 (1) If the commissioner finds that the licensee has violated any provision of this article or
6 any rule promulgated or order issued by the commissioner, or if the commissioner finds the

7 existence of any ground on which a license could have been refused, if the licensee were then
8 applying for a license, the commissioner may:

9 (A) Revoke the licensee's license;

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

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

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

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

18 ~~(b) If a supplier or distributor fails or refuses to keep in effect the bond required by §60-8-~~
19 ~~29 of this article, the commissioner shall automatically suspend the supplier or distributor's license~~
20 ~~until the bond required by §60-8-20 of this article is furnished to the commissioner, at which time~~
21 ~~the commissioner shall vacate the suspension~~

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

26 ~~(d)~~(c) An applicant or licensee, as the case may be, adversely affected by the order has a
27 right to a hearing before the commissioner if a written demand for hearing is served upon the
28 commissioner within 10 days following the receipt of the commissioner's order by the applicant or
29 licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend
30 the execution of the order with respect to which a hearing has been demanded, except an order
31 suspending a license under the provisions of §60-8-29 of this code. The person demanding a
32 hearing shall give security for the cost of the hearing in a form and amount as the commissioner

33 may reasonably require. If the person demanding the hearing does not substantially prevail in the
34 hearing or upon judicial review thereof as provided in subsections ~~(g)~~(f) and ~~(h)~~(g) of this section,
35 then the costs of the hearing shall be assessed against him or her by the commissioner and may
36 be collected by an action at law or other proper remedy.

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

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

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

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

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

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

1 Each applicant for a distributor's license or a supplier's license shall furnish at the time of
2 application ~~a bond with a corporate surety authorized to transact business in this State, payable~~
3 ~~to the State, and conditioned on the payment of all taxes and fees herein prescribed and on the~~
4 ~~faithful performance of and compliance with the provisions of this article.~~ an affidavit of compliance
5 with federal and state laws regarding tied house laws, trade practice requirements, and furnishing
6 things of value requirements set forth in the code and the rules. Licensed distributors and
7 suppliers shall have their licenses suspended, upon 10 days written notice by the commissioner,
8 for failing to pay their taxes to the Tax Commissioner or who are not otherwise in good standing
9 with the commissioner and other state agencies. If the licensed distributors and suppliers fail to
10 pay their taxes or otherwise fail to take corrective actions to put the licensed distributors and
11 suppliers in good standing within 30 days from the date of suspension of the licensee's license,
12 then the licensee's license shall be revoked pursuant to the requirements of this article.

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

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

1 (a) Any Class A wine licensee, in good standing with the commissioner, may apply, on a
2 form provided by the commissioner, to sell, serve, and furnish wine for on-premises consumption

3 on the licensee's licensed premises in a private wine outdoor dining area or private wine outdoor
4 street dining area, as authorized by any municipal council or county commission who has
5 determined that such areas are legally demarcated by a municipality or county for the sale and
6 consumption of wine.

7 (b) The Class A wine licensee must submit the municipal or county approval of private
8 wine outdoor dining area or private wine outdoor street dining area and a revised floorplan
9 requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded
10 outdoor area that must be contiguous to the licensee's licensed premises for private wine outdoor
11 dining or the bounded outdoor area may be non-contiguous to the licensee's licensed premises,
12 but in close proximity, for private wine outdoor street dining. For purposes of this section, "close
13 proximity," means an available area within 500 feet of the licensee's licensed premises.

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

18 (d) For purposes of this section, private wine outdoor dining and private wine outdoor
19 street dining include dining areas that are:

20 (1) Outside and not served by an HVAC system for air handling services and use outside
21 air;

22 (2) Open to the air; and

23 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
24 approve a partial enclosure with up to two temporary or fixed walls.

25 Any areas where seating is incorporated inside a permanent building with ambient air
26 through HVAC is not considered outdoor dining pursuant to this subsection.

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

33 **§60-8-34. When retail sales prohibited.**

1 It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine
2 bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants,
3 agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m.
4 or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine
5 restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between
6 the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of
7 this code, ~~on Sundays,~~ or between the hours of 2:00 a.m. and ~~7:00~~ 6:00 a.m. on weekdays, ~~and~~
8 ~~Saturdays, and Sundays.~~ Notwithstanding any other provision of law, sales of wine for on-
9 premises consumption and for off-premises consumption may begin at 6:00 a.m. unless otherwise
10 determined by the residents of a county that have elected to delay sales pursuant to §7-1-3ss of
11 this code.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-1. Definition of Hard Cider.

1 “Hard Cider” means a type of wine that is derived primarily from the fermentation of apples,
2 pears, peaches, honey, or other fruit, or from apple, pear, peach, or other fruit juice concentrate
3 and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at
4 least one half of one percent and less than 12 and one half percent alcohol by volume; and is

5 advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as
6 wine, wine product, or as a substitute for wine.

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

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

8 (b) Except as stated in this article, all hard cider distributors are bound by all wine
9 requirements set forth in §60-8-1 et seq., §60-4-3b, and §60-6-2, of this code which shall apply to
10 distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may
11 distribute hard cider in the same manner and to the same persons, and subject to the same
12 limitations and conditions, as a license or legal right would authorize him or her to distribute wine.
13 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.

1 (a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021,
2 by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent
3 to West Virginia adult residents from direct shippers, a tax of 22.6 cents per gallon, in like ratio for
4 any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers
5 eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider shall be eligible for such credits
6 in this state against the tax on hard cider. In the case of a person who produces not more than
7 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit
8 against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine

9 gallons of hard cider which are removed during such year for consumption or sale and which have
10 been produced at qualified facilities in the United States. That credit shall be reduced by one
11 percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of
12 hard cider during the calendar year. For the purposes of this section, the term "wine gallon"
13 means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On
14 lesser quantities, the tax shall be paid proportionately (fractions of less than one-tenth gallon
15 being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to
16 the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4
17 of this code.

18 (b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of
19 any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the
20 hard cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-
21 12 of this code.

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

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

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

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

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

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

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

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

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

13 (c) Notwithstanding any provision in §60-3-25 of this code to the contrary, any permit
14 issued under this section shall be effective for a period of up to five years: *Provided*, That the

15 applicant files an annual statement of necessity, supported by written findings from the Agriculture
16 Commissioner, with the commissioner. After the five-year permit issued pursuant to this section
17 has expired, any subsequent application for a permit shall be submitted pursuant to §60-3-25 of
18 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.**

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

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

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

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

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

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

35 (g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under
36 §60-8-6c of this code to sell wine growlers, if a winery or farm winery only desires to sell hard
37 cider in the wine growler, and no other wine, then the license fee shall be \$50.

§60-8A-6. Rule-making authorization.

1 The West Virginia Alcoholic Beverage Control Commissioner is authorized to propose
2 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.

1 Any proprietor or any person in charge of a dance house, concert saloon, theater,
2 museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors

3 are sold or given away, or any place of entertainment injurious to health or morals who admits or
4 permits to remain therein any minor under the age of 18 years, unless accompanied by his or her
5 parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a
6 fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private
7 caterer, private club restaurant, private manufacturer club, private fair and festival, private resort
8 hotel, private hotel, private golf club, private nine-hole golf course, private resort hotel, and private
9 golf club private tennis club, private wedding venue or barn, private outdoor dining and private
10 outdoor street dining, and a private multi-vendor fair and festival license licensed pursuant to §60-
11 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)(74), §60-
12 7-2(i)(78), 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-
13 2(o)(8), §60-7-2(p)(8), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a, of this code; or (b) a private
14 club with more than 1,000 members that is in good standing with the Alcohol Beverage Control
15 Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and
16 which has designated certain seating areas on its licensed premises as nonalcoholic liquor and
17 nonintoxicating beer areas, as noted in the licensee's floorplan; ~~or (c) a private fair and festival~~
18 ~~that is in compliance with §60-7-2(f)(7) of this code,~~ by utilizing a mandatory carding or
19 identification program whereby all members or guests being served or sold alcoholic liquors,
20 nonintoxicating beer, or nonintoxicating craft beer are asked and must provide their proper
21 identification to verify their identity and further that they are of legal drinking age, 21 years of age
22 or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating
23 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 begin sales of beer, wine, and liquor at 6:00 a.m. (2) the ability to offer 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; (3) 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; (4) outdoor dining and outdoor street dining areas when authorized by a municipality for beer, wine, and liquor; (5) 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; (6) 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; (7) 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; (8) 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; (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; (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 one-day license for a charity to conduct a liquor auction in conjunction with a private club; (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 offer 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.