

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 299

FISCAL
NOTE

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

[BY REQUEST OF THE EXECUTIVE]

[Introduced February 16, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, designated §11-16-6d and §11-16-11c; to amend and reenact §11-16-9 of said
3 code; to amend said code by adding thereto two new sections, designated §19-2-13 and
4 §19-2-14; to amend and reenact §60-1-5a of said code; to amend and reenact §60-4-3a
5 and §60-4-3b of said code; to amend said code by adding thereto a new section,
6 designated §60-4-3c; to amend and reenact §60-6-8 of said code; to amend and reenact
7 §60-7-2 and §60-7-6 of said code; to amend said code by adding thereto five new sections,
8 designated §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, and §60-7-8f; to amend and reenact
9 §60-8-2, §60-8-3, §60-8-4, §60-8-18, and §60-8-29 of said code; to amend said code by
10 adding thereto four new sections, designated §60-8-6c, §60-8-6d, §60-8-6e, and §60-8-
11 32a; to amend said code by adding thereto a new article, designated §60-8A-1, §60-8A-
12 2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6; and to amend and reenact §61-8-27 of
13 said code, all relating to creating the authority and license to deliver nonintoxicating beer
14 or nonintoxicating craft beer with requirements, no additional fee for certain licensees, a
15 license fee for third parties, and a nonintoxicating beer retail transportation permit with a
16 fee and requirements; providing certain licensees with the authority for nonintoxicating
17 beer or nonintoxicating craft beer outdoor dining and outdoor street dining; authorizing in-
18 person or in-vehicle pick up of purchased food and nonintoxicating beer or nonintoxicating
19 craft beer orders-to-go; creating an unlicensed brewer or home brewer temporary license
20 for use at fairs and festivals, requirements, and a license fee; relating to the manufacture
21 and sale of hard cider and wine by establishing the Agriculture Development Fund;
22 establishing permitted expenditures from the Agriculture Development Fund; creating a
23 new program to develop hard cider; providing for wine definitions; clarifying various
24 aspects of wine, specifically the alcohol by volume percentage for table wine, wine, and
25 fortified wine; adding the definition of “nonfortified dessert wine”; creating a private
26 manufacturer club license for distilleries, mini-distilleries, micro-distilleries, wineries, and

27 farm wineries, requirements, and a license fee; authorizing distilleries, mini-distilleries, and
28 micro-distilleries to also operate wineries, farm wineries, brewers, and resident brewers;
29 authorizing wineries and farm wineries to also operate as distilleries, mini-distilleries,
30 micro-distilleries, brewers, and resident brewers; creating a private direct shipper license,
31 requirements, and license fee; authorizing the ability to premix alcoholic liquors, creating
32 a permit, and permit fee per approved alcoholic beverage; creating private caterer license,
33 requirements, and license fee; creating a private club bar license, requirements, and
34 license fee; creating a private club restaurant license, requirements, and license fee;
35 creating a private manufacturer club license, requirements, and license fee; authorizing a
36 distillery, mini-distillery, or micro-distillery to also obtain a winery or farm winery license;
37 authorizing a winery or farm winery to also obtain a distillery, mini-distillery, or micro-
38 distillery license; creating a private tennis club license, requirements, and license fee;
39 creating a private wedding venue or barn license, requirements, and license fee; creating
40 a one-day charitable rare, antique, or vintage liquor auction license on a limited basis for
41 charitable purposes, requirements, and license fee; creating a private multivendor fair and
42 festival license, requirements, and license fee; creating private outdoor dining and private
43 outdoor street dining areas as legally demarcated areas that are not a public place;
44 authorizing and creating craft cocktail growlers, requirements, license fee, and a private
45 cocktail delivery permit; authorizing in-person or in-vehicle pick up of purchased food and
46 craft cocktail growler orders-to-go; clarifying penalties for failure to meet wine licensure
47 requirements; replacing wine bond requirements that secure the payment of taxes by
48 distributors, suppliers, certain wineries, and certain farm wineries, who are acting as either
49 suppliers or distributors in a limited capacity, with an affidavit; providing penalties for failure
50 to pay taxes and maintain good standing with the state; authorizing wineries and farm
51 wineries to sell wine growlers, requirements, and no license fee; authorizing certain Class
52 A and Class B licensees to sell wine growlers, requirements, and license fee; creating the

53 authority and license to deliver wine with a private wine delivery license, requirements, no
54 additional fee for certain licensees, a license fee for third parties, and a private wine retail
55 transportation permit, requirements and a permit fee; creating private wine outdoor dining
56 and private wine outdoor street dining areas as legally demarcated areas that are not a
57 public place; authorizing in-person or in-vehicle pick up of purchased food and wine
58 orders-to-go; providing that there is no separate license required to manufacture and sell
59 hard cider under certain conditions; providing for a hard cider distributor's license;
60 providing for hard cider exemptions to the wine liter tax; establishing a hard cider gallon
61 tax; providing for the application of West Virginia Tax Procedures and Administration Act
62 and West Virginia Tax Crimes and Penalties Act to the hard cider gallon tax; providing for
63 an internal effective date; providing for a tax credit against the hard cider tax; providing
64 for applicability of other laws; requiring regular reports to the Tax Commissioner; providing
65 for applications to import products necessary to manufacture hard cider under certain
66 conditions; providing for hard cider sales for consumption; providing for complementary
67 samples to be given; establishing requirements for complementary samples; permitting
68 the sale of wine growlers; providing for wine growler requirements and fee, in certain
69 circumstances; and providing additional exceptions to the criminal penalty for the unlawful
70 admission of children to dance house for certain private clubs with approved age
71 verifications systems.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

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

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 and penalties of this article.

12 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales
13 or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
14 when contracted with one or more Class A retail dealers who are licensed to sell nonintoxicating
15 beer or nonintoxicating craft beer for the privilege of ordering and delivery 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 via
20 telephone, a mobile ordering application, or a web-based software program. The nonintoxicating
21 beer or nonintoxicating craft beer delivery license nonprorated, nonrefundable fee is \$250 per
22 third party entity, with no limit on the number of drivers and vehicles.

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

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 of at least \$15 in total value, not including gratuity or taxes,
30 and the completion of the sale may be accomplished by the delivery of food and nonintoxicating
31 beer or nonintoxicating craft beer by the licensee or 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 of at least \$15 in total value, not including gratuity or taxes,
36 shall for this article mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked,
37 boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and
38 prepared, and does not include pre-packaged food from the manufacturer.

39 (4) An order, sale, and delivery may consist of up to a six-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. No percentage of the delivery order may be collected by the third party delivery
47 licensee. The convenience fee charged by the third party delivery licensee to the purchasing
48 person shall be no greater than five dollars per delivery order where nonintoxicating beer or
49 nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also
50 licensed for wine growler delivery as set forth in §60-8-6c of the code or craft cocktail growler
51 delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and
52 delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

53 (e) Delivery Requirements. -

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

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

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

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

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

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

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

72 (8) 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 (9) 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 and the telephone, mobile ordering application, or web-based

79 software must only permit the actual purchasing person to accept the food or a meal, and
80 nonintoxicating beer or nonintoxicating craft beer delivery which is subject to verification upon
81 delivery with the delivery person's visual review and 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, including the delivery driver's
85 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, including the delivery driver's name and
88 vehicle information;

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

91 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be
92 issued a retail transportation permit per subsection (g) of this section.

93 (g) Retail Transportation Permit. -

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

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

102 (h) Enforcement. -

103 (1) The Licensee, the licensee's employees, or licensee's independent contractors and
104 any licensed third party, the licensed third party's employees, or licensed third party's independent

105 contractors are responsible for any violations 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 receiving delivery of orders are deemed to be purchasers.

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

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

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

37 A Class B license may be issued only to the proprietor or owner of a grocery store. For
38 the purpose of this article, the term "grocery store" means any retail establishment commonly
39 known as a grocery store or delicatessen, and caterer or party supply store, where food or food
40 products are sold for consumption off the premises, and includes a separate and segregated

41 portion of any other retail store which is dedicated solely to the sale of food, food products and
42 supplies for the table for consumption off the premises. Caterers or party supply stores are
43 required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

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

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

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

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

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

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

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

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

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

74 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a
75 license shall file a final report, on a form provided by the commissioner, that is dated as of June
76 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
77 barrels and gallons produced at its principal place of business and manufacture during the prior
78 year.

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

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

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

92 (h) Notwithstanding subsections (a) and (b) of this section a Class A retail dealer, in good

93 standing with the commissioner, may apply, on a form provided by the commissioner, to sell,
94 serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption
95 in an outdoor dining area or outdoor street dining area, as authorized by any municipal council or
96 county commission and any state or county health department. The Class A retail dealer must
97 submit the municipal council, county commission, or any state or county health department
98 approval and a revised floorplan requesting to sell and serve nonintoxicating beer or
99 nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and
100 bounded outdoor area that must be contiguous to the licensee's licensed premises for
101 nonintoxicating beer or nonintoxicating craft beer outdoor dining or that may be noncontiguous to
102 the licensee's licensed premises, but in close proximity, for nonintoxicating beer or nonintoxicating
103 craft beer outdoor street dining. Nonintoxicating beer or nonintoxicating craft beer outdoor dining
104 or outdoor street dining may be operated in conjunction with a private outdoor dining or private
105 outdoor street dining area set forth in §60-7-8d of this code and private wine outdoor dining or
106 private wine outdoor street dining set forth in §60-8-32a of this code.

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

§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 sell 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 and when
5 issued a temporary and limited licensure by the commissioner. The unlicensed brewer or home
6 brewer are exempt from the requirements of registering the brand and utilizing a distributor and a
7 franchise agreement only for the limited nature of this temporary license only.

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, rules,
11 or orders as the circumstances of each festival or fair may require, including, without limitation,
12 the right to revoke or suspend any license issued pursuant to this section prior to any notice or
13 hearing notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*,
14 That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-
15 8(a)(3) of this code be waived nor shall any exception be granted with respect to those provisions.

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

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

30 analysis for the nonintoxicating beer or nonintoxicating craft beer it desires to temporarily provide
31 for samples and temporarily sell as nonintoxicating beer or nonintoxicating craft beer to a licensee
32 licensed under §11-16-11 and §11-16-11b of this code; and such other information as the
33 commissioner may reasonably require.

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

41 (4) An applicant that receives this temporary special license for any event licensed under
42 §11-16-11 and §11-16-11b of this code will provide a signed and notarized agreement where the
43 applicant agrees to pay all municipal, local, and sales taxes applicable to the sale of
44 nonintoxicating beer or nonintoxicating craft beer in West Virginia.

45 (5) An application must be submitted per special license for an event licensed under §11-
46 16-11 and §11-16-11b of this code that the applicant desires to attend, and the license fee shall
47 cover up to two separate one-day licenses an event licensed under §11-16-11 and §11-16-11b of
48 this code before an additional fee would be paid. In no circumstance would such an applicant be
49 permitted to attend more than four events per year. Any such applicant desiring to attend more
50 than four events per year or otherwise operate in West Virginia would need to seek appropriate
51 licensure as a brewery or resident brewery in this state.

52 (6) Notwithstanding the provisions of this article and requirements for licensure, brand
53 registration, franchise requirements, payment of beer barrel tax, and the appointment of a
54 distributor franchise network, this temporary special license for an event licensed under §11-16-
55 11 and §11-16-11b of this code, once granted, permits such a licensee to operate in this limited

56 capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this
57 code subject to the limitations noted in this section.

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

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

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

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

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.

§19-2-14. 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 §19-2-13
 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 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 free complimentary samples offered pursuant to §60-
 4 6-1 of this code, customers are prohibited from consuming any liquor on the premises of the
 5 distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-
 6 distillery who obtains a private manufacturer club license set forth in §60-7-2 of this code and a
 7 Class A retail dealer license set forth in §11-16-1 et seq. of the code: Provided, That a licensed
 8 distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors
 9 as authorized per this subsection ~~of~~ when alcoholic liquors are manufactured by that licensed
 10 distillery, mini-distillery, or micro-distillery for consumption on the licensed premises ~~only~~, and
 11 further such on premises consumption is permitted on Sundays beginning at 10:00 a.m. in any
 12 county in which the same has been approved as provided for in §7-1-3pp of this code.

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

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

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

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

44 distillery location. ~~No more than one distillery or mini-distillery license may be issued to a single~~
45 ~~person or entity and no person may hold both a distillery and a mini-distillery license~~ The owners
46 of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery,
47 brewery, or 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. Except for free complimentary
4 samples offered pursuant to §60-6-1 of this code, the private wine restaurant licensed premises,
5 or the private manufacturer club licensed premises, customers are prohibited from consuming
6 any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-
7 1-5c of this code unless such winery, farm winery, or farm entity has obtained a multi-capacity
8 winery or farm winery license: *Provided*, That a licensed winery or farm winery may offer
9 complimentary samples per this subsection of wine manufactured by that licensed winery or farm
10 winery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any county
11 in which the same has been approved as provided in §7-1-3ss of this code.

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

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

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

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

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

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

28 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
29 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
30 §60-8-1 et seq. of this code.

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

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

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

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

42 (i) A winery or farm winery must maintain a separate winery or farm winery supplier,
43 retailer, and direct shipper licenses when acting in one or more of those capacities and must pay
44 all associated license fees, unless such winery or farm winery holds a license issued pursuant to
45 the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate
46 licenses or a multicapacity winery or farm winery license, may act as its own supplier; retailer for
47 off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant;

48 and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that
 49 has applied, paid all fees, and met all requirements may obtain a private manufacturer club license
 50 subject to the requirements of §60-7-1 et seq., of this code and a Class A retail dealer license
 51 subject to the requirements of §11-16-1 et seq. of the code. All wineries must use a distributor to
 52 distribute and sell their wine in the state, except for farm wineries. ~~No more than one winery or~~
 53 ~~farm winery license may be issued to a single person or entity and no person may hold both a~~
 54 ~~winery and a farm winery license~~ Wineries or farm wineries may enter into alternating wine
 55 proprietorship agreements pursuant to §60-1-5c of this code.

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

58 (j) (k) For purposes of this section, terms will have the same meaning as provided in §8-
 59 13-7 of this code.

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

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

12 Virginia by licensed private direct shippers shall be made by a licensed and bonded shipping
13 carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

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

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

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

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

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

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

27 (6) Obtain from the commissioner a private direct shipper's license;

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

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

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

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

37 (2) Not ship to any address in an area identified by the commissioner as a “dry” or local

38 option area where it is unlawful to sell liquor;

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

41 (4) Not ship liquor from overseas or internationally;

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

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

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

53 (d) Payment of Fees and Taxes.-

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

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

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

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

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

70 (f) Records and reports. –

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

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

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

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

79 (i) Penalties. –

80 (1) The commissioner may enforce the requirements of this chapter by administrative
81 proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private
82 direct shipper's license and the commissioner may accept payment of a penalty as set forth in
83 §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the
84 commissioner's discretion. Hearings and appeals on such notices may be had in the same
85 manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

86 (2) If any such distillery violates the provisions of this chapter, the commissioner may
87 determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to an adult West
88 Virginia resident or to the commissioner, or otherwise engage in the liquor business in this state
89 for a period of one year from the date a notice is mailed to such person by the commissioner of

90 the fact that such person has violated the provisions of this article. During such one-year period,
 91 it shall be unlawful for any person within this state to buy or receive liquor from such person or to
 92 have any dealings with such person with respect thereto.

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

§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 state, may sell, furnish, tender,
26 and serve pre-mixed beverages consisting of alcoholic liquors, nonalcoholic mixer, ~~and ice~~ if:

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

39 (B) The licensee pays a \$100 nonprorated and nonrefundable "Pre-Mixing Beverage
40 Permit" fee per beverage requested for approval, with a maximum of 10 alcoholic beverage

41 permits per licensee;

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

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

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

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

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

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

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

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

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

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

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

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

§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 who may apply

40 for 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 pre-approved unlicensed private venues for an individual or
45 other person hiring the private caterer for food and alcohol services, including, but not limited to,
46 transporting said food and alcohol to and from the pre-approved unlicensed private venue. The
47 private caterer and catering event:

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

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

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

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

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

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

64 (7) Shall provide a floorplan for each of the 10 unlicensed private venues to comprise the
65 private catering premises, which shall only include spaces in buildings or rooms of an unlicensed

66 private venue where the private caterer has control of the space for a set time period where the
67 space safely accounts for the ingress and egress of the stated members and guests who will be
68 attending the private catering event at the catering premises, the unlicensed private venue's
69 floorplan during the set time period shall comprise the private caterer's licensed premises, which
70 is authorized for the lawful sale, service, and consumption of alcoholic liquors throughout the
71 licensed premises whether these activities were conducted in a building or structure;

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

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

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

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

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

84 (1) Has at least 100 members;

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

91 (3) Maintains, at any one time, \$500 of food inventory capable of being prepared in the

92 private club bar's kitchen, and in calculating the food inventory the commissioner includes
93 television dinners, bags of chips or similar products, microwavable food or meals, frozen meals,
94 prepackaged foods, or canned prepared foods;

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

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

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

104 (1) Has at least 100 members;

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

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

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

118 beverage purposes in the restaurant area of a private club restaurant as a guest; and

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

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

127 (1) Has at least 100 members;

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

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

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

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

143 (6) Lists in the application referenced in subdivision (5) of this subsection the entire

144 property and all adjoining buildings and structures on the private manufacturer club's floorplan
145 which would comprise the licensed premises, which would be authorized for the lawful sales,
146 service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft
147 beer throughout the licensed premises whether these activities were conducted in a building or
148 structure or outdoors while on the private manufacturer club's licensed premises and as noted on
149 the private manufacturer club's floorplan;

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

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

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

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

157 (1) Has at least 100 members;

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

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

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

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

169 (6) Shall provide a floorplan for the proposed premises with a defined and bounded area

170 to safely account for the ingress and egress of stated members and guests who will be attending
171 the festival, fair, or other event; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 ~~(9)~~(10) May have a separately licensed resident brewer with a brewpub license inner-
227 connected via a walkway, doorway, or entryway, all as determined and approved by the
228 commissioner, for limited access during permitted hours of operation for tours and complimentary
229 samples at the resident brewery.

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

232 (1) Has at least 100 members;

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

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

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

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

247 (6) Has an identified person or persons or entity that has right, title, and ownership interest

248 in the real property buildings and structures located on the proposed licensed premises; ~~and~~

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

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

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

253 (1) Has at least 50 members;

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

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

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

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

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

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

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

273 (o) "Private tennis club" means an applicant for a private club or licensed private club

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

275 (1) Has at least 100 members;

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

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

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

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

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

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

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

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

299 (1) Has at least 25 members;

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

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

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

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

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

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

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

324 The Department of Natural Resources, the authority governing any county or municipal
325 park, or any county commission, municipality, other governmental entity, public corporation or

326 public authority operating any park or airport may lease as lessor a building or portion thereof or
327 other limited premises in any such park or airport to any corporation or unincorporated association
328 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.

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

22 (c) The fee for any such license issued following January 1 of any year and to expire on

23 June 30 of such year shall be one half of the annual license fee prescribed by subsections (a)
24 and (b) of this section.

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

32 (e) All such fees shall be paid by the commissioner to the State Treasurer and credited to
33 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, one-time, once a year license to a
2 licensed private club in partnership with 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. The one-time annual
7 limit applies to the private club and the nonprofit.

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

12 (c) Requirements.-

13 (1) The applicants shall jointly complete an application, at least 15 days prior to the event,

14 including, but not limited to, the date, time, place, and floorplan of the charitable event, a signed
15 and notarized statement that at least 80 percent of the gross proceeds from the charitable event
16 will be donated directly to the nonprofit before accounting for the charitable event's expenses,
17 and such other information as the commissioner may reasonably require. The commissioner may
18 audit and verify the 80 percent requirement.

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

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

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

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

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

35 (d) Exceptions.-

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

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

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

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

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

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

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

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

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 further shall provide any documentation or agreements
22 of such 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 agreement between the vendors and executed by all vendors and/or food
29 caterers stating that each vendor is jointly and severally liable for any improper acts or conduct
30 committed during 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 which 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 fair and festival held or from a resident brewer acting
46 in a limited capacity as a distributor, all in accordance with §11-16-1 et seq. of this code.

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

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

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

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

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

67 circumstances may the provisions of §60-7-12 of this code be waived or an exception granted
68 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 in a private outdoor dining area or private outdoor street
5 dining area, as authorized by any municipal council or county commission and any state or county
6 health department who has determined that such areas are legally demarcated by a municipality
7 or county for the sale and consumption of alcoholic liquors and nonintoxicating beer or
8 nonintoxicating craft beer.

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

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

21 (d) For purposes of this section, private outdoor dining and private outdoor street dining
22 include dining areas that are: (i) Outside and not served by an HVAC system for air handling

23 services and use outside air; (ii) open to the air; (iii) not enclosed by fixed or temporary walls,
 24 however, the commissioner may seasonally approve a partial enclosure with up to two temporary
 25 or fixed walls; and (iv) not areas where seating is incorporated inside a permanent building with
 26 ambient air through HVAC.

27 (e) A private club restaurant or a private manufacturer club licensed for craft cocktail
 28 growler sales must provide food or a meal along with a sealed craft cocktail growler sales as set
 29 forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and
 30 a sealed craft cocktail growler order-to-go, subject to verification that the purchaser is 21 years of
 31 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 in order to protect the public
 4 health, welfare, and safety of the citizens of this state and promote hospitality and tourism.
 5 Therefore, this section authorizes a licensed private club restaurant or private manufacturer club,
 6 to have certain abilities in order to promote the sale of liquor manufactured in this state for the
 7 benefit of the citizens of this state, the state’s growing distilling industry, and the state’s hospitality
 8 and tourism 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 who pays the fee in subsection (e) of this section and meets the requirements
 11 of this section may offer and sell a craft cocktail growler in the ratio of up to one fluid ounce of
 12 liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for
 13 the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed
 14 premises in a sealed craft cocktail growler for personal consumption only off of the licensed
 15 premises, and not for resale. Prior to the sale, the licensee shall verify in-person, using proper

16 identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and
17 that the patron is not visibly or noticeably 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) Fees. — Commencing July 1, 2021, and every July 1 thereafter, there is an annual
26 \$100 nonrefundable and nonproratable fee for a craft cocktail growler license. The licensee must
27 be in good standing with the state at the time of paying the fee.

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

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

42 compartment.

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

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

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

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

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

86 (m) Rules. — The commissioner, in consultation with the Bureau for Public Health
 87 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-
 88 1 et seq. of this code, to implement this section.

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

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 via telephone, a mobile ordering application, or
7 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 and
10 penalties of this article.

11 (b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery
12 license when contracted with one or more licensed private club restaurants or private
13 manufacturer clubs who are licensed to sell liquor with nonalcoholic mixers and beverages for the
14 privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail
15 growler license. The order and delivery of a sealed craft cocktail growler permitted for off-premises
16 consumption by a third party licensee when a private club or private manufacturer club sells to a
17 person purchasing the craft cocktail growler via telephone, a mobile ordering application, or a
18 web-based software program. The private delivery license nonprorated, nonrefundable fee is
19 \$250 per third party entity, with no limit on the number of drivers and vehicles.

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

23 (d) *Sale Requirements.* -

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

28 (2) Any purchasing person must be 21 years of age or older, must not be visibly or

29 noticeably intoxicated at the time of delivery, and meet the requirements set forth in this chapter
30 for the sale of alcoholic liquors and as set forth in §11-16-1 et seq. of the code for nonintoxicating
31 beer or nonintoxicating craft beer.

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

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

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

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

55 delivery permit per subsection (g) of this section;

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

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

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

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

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

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

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

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

79 (2) Any application or web-based software utilized must create a stored record and image
80 of the purchasing person's legal identification and details of the sale, including the delivery driver's

81 name and vehicle information;

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

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

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

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 private club restaurant or private manufacturer club licensee must pay a permit fee
94 of \$10 per vehicle and provide vehicle and driver information, as reasonably requested by the
95 commissioner. If the private club restaurant or private manufacturer club licensee has obtained a
96 private wine retail transportation permit per §60-8-6e or a retail transportation permit per §11-16-
97 6d of this code, there will not be an additional permit fee for each vehicle. Upon any change in
98 vehicles or drivers, the licensee must update the commissioner immediately.

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

102 (h) Enforcement. -

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

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

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

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

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

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 in order to protect the public
 4 health, welfare, and safety of the citizens of this state, and promote hospitality and tourism.
 5 Therefore, this section authorizes a licensed winery or farm winery with its principal place of
 6 business and manufacture located in this state to have certain abilities in order to promote the
 7 sale of wine manufactured in this state for the benefit of the citizens of this state, the state's
 8 growing wine industry, and the state's hospitality and tourism industry, all of which are vital
 9 components for the state's economy.

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

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

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

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

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

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

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

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

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

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

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

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

69 (l) Limitations on licensees. — To be authorized under this section, a licensed winery or

70 farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery
 71 or farm winery's principal place of business and manufacture located in the State of West Virginia.
 72 A licensed winery or farm winery authorized under this section shall be subject to the applicable
 73 penalties under this article for violations of this section.

74 (m) Rules. — The commissioner, in consultation with the Bureau for Public Health
 75 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-
 76 1 et seq. of this code, to implement this section.

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 hundred fifty dollars per year for a wine specialty shop license, in addition to any
23 other licensing fees paid by a winery or retailer holding a license. Except for the amount of the
24 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.

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

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

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

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

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

76 (h)(1) The commissioner may issue a license for the retail sale of wine at any festival or
77 fair which is endorsed or sponsored by the governing body of a municipality or a county
78 commission. Such license shall be issued for a term of no longer than 10 consecutive days and

79 the fee for the license shall be \$250 regardless of the term of the license. The application for the
80 license shall contain information required by the commissioner and shall be submitted to the
81 commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

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

86 (3) A licensed winery or a farm winery, which has the festival or fair licensee's written
87 authorization and approval from the commissioner, may, in addition to or in conjunction with the
88 festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed
89 three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during
90 the operation of a festival or fair only; and may sell wine for off-premises consumption only:
91 *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings,
92 samples and off-premises sales shall occur under the hours of operation as required in this article,
93 except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of
94 2:00 a.m. and 10:00 a.m.

95 (4) A festival or fair license may be issued to a "wine club" as defined in this subdivision
96 for a license fee of \$250. The festival or fair committee or the governing body shall designate a
97 person to organize a club under a name which includes the name of the festival or fair and the
98 words "wine club". The license shall be issued in the name of the wine club. A licensee may not
99 commence the sale of wine as provided in this subdivision until the wine club has at least 50 dues-
100 paying members who have been enrolled, and to whom membership cards have been issued.
101 Thereafter, new members may be enrolled and issued membership cards at any time during the
102 period for which the license is issued. A wine club licensed under the provisions of this subdivision
103 may sell wine only to its members, and in portions not to exceed eight ounces per serving. The
104 sales shall take place on premises or in an area cordoned or segregated so as to be closed to

105 the general public, and the general public shall not be admitted to the premises or area. A wine
106 club licensee under the provisions of this subdivision may serve complimentary samples of wine
107 in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper
108 where the wine may be consumed on the licensed premises of any Class A private wine retail
109 license or private club. A wine club which violates the provisions of this subdivision is subject to
110 the penalties in this article.

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

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

123 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in
124 subsection (q) of this section may conduct the same sampling and sales set forth in subsection
125 (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and
126 festival license and temporary and limited licensure by the commissioner. An unlicensed winery
127 shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in
128 subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for
129 certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances
130 of each festival or fair may require, including, without limitation, the right to revoke or suspend any

131 license issued pursuant to this section prior to any notice or hearing notwithstanding the
132 provisions §60-8-27 and §60-8-28 of this code: *Provided, however,* That under no circumstances
133 shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception
134 be granted with respect to those subsections.

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

153 (2) A license issued under this subsection and the licensee holding the license are subject
154 to all other provisions of this article and the rules and orders of the commissioner relating to the
155 special license: *Provided,* That the commissioner may by rule or order grant certain waivers or
156 exceptions to those rules or orders as the circumstances of each professional baseball stadium

157 may require, including, without limitation, the right to revoke or suspend any license issued
158 pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of
159 this code; ~~and~~ *Provided, however,* That under no circumstances may §60-8-20(c) or §60-8-20(d)
160 of this code be waived nor shall any exception be granted concerning those subsections.

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

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

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

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

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

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

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

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

234 (q) (1) In addition to the authorization granted to licensed wineries and farm wineries in

235 subsections (h) and (p), an unlicensed winery, regardless of its designation in another state, but
236 that is duly licensed in its domicile state, may pay a \$150 nonrefundable and nonprorated fee and
237 submit an application for temporary licensure on a one-day basis for temporary sampling and sale
238 of wine in sealed containers for off-premises consumption at a special one-day license nonprofit
239 event.

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

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

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

256 (5) An application must be submitted per special one-day license for a nonprofit event the
257 applicant winery desires to attend, and the license fee shall cover up to two special one-day
258 license for nonprofit events before an additional fee would be paid. In no circumstance would such
259 a winery be permitted to attend more than four special one-day license for nonprofit events per
260 year. Any such applicant or unlicensed winery desiring to attend more than four special one-day

261 license for nonprofit events per year or otherwise operate in West Virginia would need to seek
262 appropriate licensure as a winery or a farm winery in this state.

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

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

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

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

284 (s)(1) The commissioner may issue a special license for the retail sale of wine in a college
285 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and

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

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

310 (3) The commissioner may propose rules for promulgation in accordance with §29A-3-1
311 *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.

**§60-8-6d 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 growers.**

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 in order to protect the public
4 health, welfare, and safety of the citizens of this state and promote hospitality and tourism.
5 Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine
6 restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club
7 restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have
8 certain abilities in order to promote the sale of wine manufactured in this state for the benefit of
9 the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism
10 industry, all of which are vital 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, Class B retail dealer, private club restaurant,
13 private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in
14 subsection (i) of this section and meets the requirements of this section may offer wine for retail
15 sale to patrons from their licensed premises in a sealed wine growler for personal consumption
16 only off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify,
17 using proper identification, that any patron purchasing wine is 21 years of age or over and that
18 the patron is not visibly 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) Fees. — Commencing July 1, 2021, and every July 1 thereafter, there is an annual
35 \$100 nonrefundable and nonproratable fee for a wine growler license. The licensee must be in
36 good standing with the state at the time of paying the fee.

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

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

50 (k) Nonapplicability of certain statutes. — Notwithstanding any other provision of this
51 article to the contrary, licensees under this section are permitted to break the seal of the original
52 container for the limited purpose of filling a wine growler or providing complimentary wine samples

53 as provided in this section. Any unauthorized sale of wine or any consumption not permitted on
54 the licensee's licensed premises is subject to penalties under this article.

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

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

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 via telephone, a mobile
7 ordering application, or a web-based software program, as authorized by the licensee's license.
8 There is no additional fee for a Class A wine licensee to obtain a private wine delivery license.
9 The order, sale, and delivery process must meet the requirements of this section and penalties of
10 this article.

11 (b) A third party, not licensed for wine sales or distribution, may apply for a private wine
12 delivery license when contracted with one or more Class A wine licensees who are licensed to
13 sell wine for the privilege of ordering and delivery of wine in the original container of sealed bottles,
14 or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and
15 delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is
16 permitted for off-premises consumption by a third party licensee when sold by a Class A wine
17 licensee to a person purchasing the wine via telephone, a mobile ordering application, or a web-
18 based software program. The private wine delivery license nonprorated, nonrefundable fee is
19 \$250 per third party entity, with no limit on the number of drivers and vehicles.

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

23 (d) Sale Requirements. -

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

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

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

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

39 (5) A third-party delivery licensee shall not have a pecuniary interest in a Class A wine
40 licensee, as set forth in this article, therefore a third-party private wine delivery licensee may only
41 charge a convenience fee. No percentage of the delivery order may be collected by the third-party
42 private wine delivery licensee. The convenience fee charged by the third-party private wine
43 delivery licensee to the purchasing person shall be no greater than five dollars per delivery order
44 where wine is ordered by the purchasing person. For any third-party licensee also licensed for
45 nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the

46 code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience
47 fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler
48 shall not exceed five dollars.

49 (e) Private Wine Delivery Requirements. -

50 (1) Delivery persons employed for the delivery of sealed wine must be 21 years of age
51 older and each delivery person's name, driver's license, and vehicle information must be filed with
52 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) Each vehicle delivering sealed wine must be issued a private wine retail transportation
56 permit per subsection (g) of this section;

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

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

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

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

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

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

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

72 (1) The delivery person and the telephone, mobile ordering application, or web-based
73 software must only permit the actual purchasing person to accept the food or meal, and wine
74 delivery which is subject to verification upon delivery with the delivery person's visual review and
75 verification and, as applicable, a stored scanned image of the purchasing person's legal
76 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, including the delivery driver's
79 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, including the delivery driver's name and
82 vehicle information;

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

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

87 (g) Private Wine Retail Transportation Permit. -

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

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

96 (3) In conjunction with §60-6-12, a private wine retail transportation permit shall meet the
97 requirements of a transportation permit authorizing the permit holder to transport wine subject to

98 the requirements of this chapter, article, and this section.

99 (h) Enforcement. -

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

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

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

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

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

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 and any state or
5 county health department who has determined that such areas are legally demarcated by a
6 municipality or county for the sale and consumption of wine.

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

12 contiguous to the licensee's licensed premises, but in close proximity, for private wine outdoor
13 street dining.

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: (i) Outside and not served by an HVAC system for air
20 handling services and use outside air; (ii) open to the air; (iii) not enclosed by fixed or temporary
21 walls, however, the commissioner may seasonally approve a partial enclosure with up to two
22 temporary or fixed walls; and (iv) not areas where seating is incorporated inside a permanent
23 building with ambient air through HVAC.

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

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

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

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 ~~(d)~~(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 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. Further, licensed distributors and
7 suppliers who fail to pay their taxes to the Tax Commissioner or who are not otherwise in good
8 standing with the state and its agencies shall be suspended upon 10 days' written notice by the
9 commissioner. If the payment of taxes or good standing is not completed in 30 days from the date
10 of suspension of the licensee's license, then the licensee's license shall be revoked pursuant to
11 the requirements of this article as it is a privilege to hold a license.

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

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 and six-tenths cents per gallon,
4 in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries,
5 and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider shall be eligible
6 for such credits in this state against the tax on hard cider. In the case of a person who produces
7 not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed
8 as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000
9 wine gallons of hard cider which are removed during such year for consumption or sale and which
10 have been produced at qualified facilities in the United States. That credit shall be reduced by
11 one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons
12 of 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 being
15 converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next
16 full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this
17 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 submit an application to the Agriculture Commissioner
 3 with a copy to the commissioner showing its inability to obtain from within this state 75 percent of
 4 the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider. The
 5 Agriculture Commissioner may issue to the applicant a permit to import such fruit, honey, or fruit
 6 juice concentrate in an amount deemed necessary by the Agriculture Commissioner to allow such
 7 farm 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 only
13 complimentary samples of hard cider manufactured at the winery's or farm winery's principal place

14 of business or manufacturing facility located in the State of West Virginia. The complimentary
15 samples may be no greater than two fluid ounces per sample per patron, and a sampling shall
16 not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or
17 farm winery providing complimentary samples shall provide complimentary food items to the
18 patron 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, and a private multi-vendor fair and
 10 festival license licensed pursuant to §60-7-1 et seq. of this code and in compliance with §60-7-
 11 2(f)(11), §60-7-2(g)(8), §60-7-2(h)(74), §60-7-2(i)(78), and §60-7-2(j)(7), §60-7-2(k)(8), §60-7-
 12 2(l)(8), §60-7-2(m)(7), §60-7-2(n)(7), §60-7-2(o)(8), §60-7-2(p)(8), and §60-7-8c(b)(14) of this
 13 code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol
 14 Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control
 15 Commissioner; and which has designated certain seating areas on its licensed premises as
 16 nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan; ~~or (c) a~~
 17 ~~private fair and festival that is in compliance with §60-7-2(f)(7) of this code,~~ by utilizing a
 18 mandatory carding or identification program whereby all members or guests being served or sold
 19 alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and must provide
 20 their proper identification to verify their identity and further that they are of legal drinking age, 21
 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or

22 nonintoxicating craft beer.

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

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