

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 610

BY SENATORS WELD, PALUMBO, TRUMP, WOELFEL

[Introduced January 24, 2020; referred
to the Committee on the Judiciary]

1 A BILL to repeal §29-22B-327 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §11-16-3 and §11-16-8 of said code; to amend and reenact §16A-6-3 of said code;
3 to amend and reenact §29-22B-503, §29-22B-504, and §29-22B-512 of said code; to
4 amend and reenact §60-1-5 of said code; to amend and reenact §60-3A-8 of said code;
5 to amend and reenact §60-7-4 and §60-7-5 of said code; and to amend and reenact §60-
6 8-16 and §60-8-17 of said code, all relating to removing resident manager requirements;
7 adding a manager requirement for West Virginia Alcohol Beverage Control Administration
8 applicants and licensees; removing residency requirements for granting permits under the
9 Medical Cannabis Act; and removing residency and United States citizenship
10 requirements for the West Virginia Lottery.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context clearly requires differently:
2 ~~(1)~~ “Brand” means a nonintoxicating beer product manufactured, brewed, mixed,
3 concocted, blended, bottled or otherwise produced, imported, or transshipped by a brewer or
4 manufacturer, the labels of which have been registered and approved by the commissioner, that
5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid
6 franchise agreement or a valid amendment thereto.
7 ~~(2)~~ “Brewer” or “manufacturer” means any person manufacturing, otherwise producing,
8 importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale
9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this
10 article. A brewer may obtain only one brewer’s license for its nonintoxicating beer or
11 nonintoxicating craft beer.

12 ~~(3)~~ “Brewpub” means a place of manufacture of nonintoxicating beer or nonintoxicating
13 craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a
14 portion of which premises is designated for retail sales of nonintoxicating beer or nonintoxicating
15 craft beer by the resident brewer owning the brewpub.

16 ~~(4)~~ “Class A retail license” means a retail license permitting the retail sale of liquor at a
17 freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

18 ~~(5)~~ “Class B retail license” means a retail license permitting the retail sale of liquor at a
19 mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

20 ~~(6)~~ “Commissioner” means the West Virginia Alcohol Beverage Control Administration
21 Commissioner.

22 ~~(7)~~ “Distributor” means and includes any person jobbing or distributing nonintoxicating
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place
24 of business shall be within this state. For purposes of a distributor only, the term “person” means
25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,
26 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
29 distributor license that are unlawful acts or violations of §11-11-1 *et seq.* of this code
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

31 ~~(8)~~ “Franchise agreement” means the written agreement between a brewer and a
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,
33 which agreement has been approved by the commissioner. The franchise agreement binds the
34 parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s
35 nonintoxicating beer products, brands or family of brands imported and offered for sale in West
36 Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the
37 brewer’s assigned territory for the distributor. All brands and line extensions being imported or

38 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a
39 written amendment to the franchise agreement. A franchise agreement may be amended by
40 mutual written agreement of the parties as approved by the commissioner with identical terms
41 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually
43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer
45 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer
46 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated
47 distributor.

48 ~~(9)~~ "Franchise distributor network" means the distributors who have entered into a binding
49 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating
50 beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may
51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the
52 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale
53 from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and
54 be bound by the selling brewer's separate franchise distributor's network for any of its existing
55 brands, line extensions, and new brands.

56 ~~(10)~~ "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine,
57 beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4
58 of this code.

59 ~~(14)~~ "Growler" means a container or jug that is made of glass, ceramic, metal, or other
60 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and
61 must be capable of being securely sealed. The growler is utilized by an authorized licensee for
62 purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for
63 personal consumption not on a licensed premise and not for resale. Notwithstanding any other

64 provision of this code to the contrary, a securely sealed growler is not an open container under
65 federal, state, and local law. A growler with a broken seal is an open container under federal,
66 state, and local law unless it is located in an area of the motor vehicle physically separated from
67 the passenger compartment. The secure sealing of a growler requires the use of a tamper-
68 resistant seal, security tape, or other material, as approved by the commissioner, placed on or
69 over the growler's opening, which seal, security tape or other material is clearly marked with the
70 date of the secure sealing by the authorized licensee who is selling the growler.

71 ~~(42)~~ "Line extension" means any nonintoxicating beer product that is an extension of brand
72 or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale
73 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or
74 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent
75 entities, contracted entities, affiliated entities, or other related entities. In determining whether a
76 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
77 to, the following factors: Name or partial name; trade name or partial trade name; logos;
78 copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

79 "Manager" means an individual who is the applicant's or licensee's on-premises employee,
80 member, partner, shareholder, director, or officer who meets licensure requirements of §11-16-1
81 et seq. of this code and the legislative rules and who actively manages, conducts, and carries on
82 the day-to-day operations of the applicant or licensee with full and apparent authority or actual
83 authority to act on behalf of the applicant or licensee, including but not limited to: coordinating
84 staffing; reviewing and approving payroll; ordering and paying for inventory, such as
85 nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security
86 systems, video and other security equipment; and any further acts or actions involved in managing
87 the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or
88 directors.

89 ~~(13)~~ “Nonintoxicating beer” means all natural cereal malt beverages or products of the
90 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and
91 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
92 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing
93 at least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by
94 weight, or 15 percent alcohol by volume, whichever is greater. The word “liquor” as used in
95 chapter 60 of this code does not include or embrace nonintoxicating beer nor any of the
96 beverages, products, mixtures, or preparations included within this definition.

97 ~~(14)~~ “Nonintoxicating beer floor plan extension” means a temporary one-day extension of
98 an existing Class A licensee’s floor plan to a contiguous, adjoining and bounded area, such as a
99 parking lot or outdoor area, which shall for the temporary period encompass the licensee’s
100 licensed premises; further ~~such~~ the license shall be endorsed or approved by the county or
101 municipality where the license is located; ~~such~~ the license shall be in good standing with the
102 commissioner, and further such temporary event shall cease on or before midnight of the
103 approved temporary one-day event.

104 ~~(15)~~ “Nonintoxicating beer sampling event” means an event approved by the
105 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
106 pursuant to §11-16-11a of this code.

107 ~~(16)~~ “Nonintoxicating beer sampling day” means any days and hours of the week where
108 Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-
109 18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating
110 beer sampling event.

111 ~~(17)~~ “Nonintoxicating craft beer” means any beverage obtained by the natural fermentation
112 of barley, malt, hops, or any other similar product or substitute and containing not less than one
113 half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent
114 alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

115 ~~(18)~~ “Original container” means the container used by a resident brewer or brewer at the
116 place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating
117 craft beer for sale at wholesale.

118 ~~(19)~~ “Person” means and includes an individual, firm, partnership, limited partnership,
119 limited liability company, association, or corporation.

120 ~~(20)~~ “Private club” means a license issued pursuant to §60-7-1 *et seq.* of this code.

121 ~~(24)~~ “Resident brewer” means any brewer or manufacturer of nonintoxicating beer or
122 nonintoxicating craft beer whose principal place of business and manufacture is located in the
123 State of West Virginia and which does not brew or manufacture more than 25,000 barrels of
124 nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than
125 10,000 barrels thereof in the State of West Virginia annually.

126 ~~(22)~~ “Retailer” means any person selling, serving, or otherwise dispensing nonintoxicating
127 beer and all products regulated by this article, including, but not limited to, malt coolers at his or
128 her established and licensed place of business.

129 ~~(23)~~ “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or
130 the commissioner’s designee.

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to any person who submits an
2 application, accompanied by a license fee and, where required, a bond, and states under oath:

3 (1) The name and residence of the applicant, the duration of such residency, ~~that the~~
4 ~~applicant has been a resident of the state for a period of two years preceding the date of the~~
5 ~~application~~ and that the applicant is 21 years of age. If the applicant is a firm, association,
6 partnership, limited partnership, limited liability company, or corporation, the application shall
7 include the residence of the members or officers ~~for a period of two years preceding the date of~~
8 ~~such application~~. If a person, firm, partnership, limited partnership, limited liability company,
9 association, corporation, or trust applies for a license as a distributor, ~~such~~ the person, or in the

10 case of a firm, partnership, limited partnership, limited liability company, association or trust, the
11 members, officers, trustees or other persons in active control of the activities of the limited liability
12 company, association or trust relating to the license, shall ~~state under oath that each has been a~~
13 ~~bona fide resident of the state for four years preceding the date of such~~ include the residency for
14 these persons on the application. All applicants and licensees must list a manager on the
15 applicant's license application, or a licensee's renewal application, and further that the manager
16 shall meet all other requirements of licensure, including, but not limited to, United States
17 citizenship or naturalization, passing a background investigation, being at least 21 years of age,
18 being a suitable person, being of good morals and character, and other requirements, all as set
19 forth in this code and the legislative rules, in order for the manager to be able to meet and conduct
20 any regulatory matters, including, but not limited to, licensure or enforcement matters related to
21 the applicant or licensee all in the interest of protecting public health and safety and being a
22 suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in
23 any manager listed on an application must be made immediately to the commissioner, in order to
24 verify that the new manager meets licensure requirements. If the applicant is a trust or has a trust
25 as an owner, the trustees or other persons in active control of the activities of the trust relating to
26 the license shall provide a certification of trust as described in §44D-10-1013 of this code. This
27 certification of trust shall include the excerpts described in §44D-10-1013(e), of this code and
28 shall further state, under oath, the names, addresses, Social Security numbers and birth dates of
29 the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or
30 older. If a beneficiary is not 21 years of age, the certification of trust must state that ~~such~~ the
31 beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21
32 years of age and who will direct all actions on behalf of such the beneficiary related to the trust
33 with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not
34 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the

35 certification of trust and state under oath his or her name, address, Social Security number and
36 birth date;

37 (2) The place of birth of applicant, that he or she is a citizen of the United States and of
38 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is
39 a corporation organized or authorized to do business under the laws of the state, the application
40 must state when and where incorporated, the name and address of each officer, and that each
41 officer is a citizen of the United States and a person of good moral character. If the applicant is a
42 firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as
43 an owner, the application shall provide the place of birth of each member of the firm, association,
44 limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or
45 other persons in active control of the activities of the trust relating to the license and that each
46 member or trustee, beneficiary or other persons in active control of the activities of the trust
47 relating to the license is a citizen of the United States, and if a naturalized citizen, when and where
48 naturalized, each of whom must qualify and sign the application; ~~The requirements as to~~
49 ~~residence do not apply to the officers of a corporation applying for a retailer's license but the~~
50 ~~officers, agent, or employee who manages and is in charge of the licensed premises shall possess~~
51 ~~all of the qualifications required of an individual applicant for a retailer's license including the~~
52 ~~requirement as to residence~~

53 (3) The particular place for which the license is desired and a detailed description thereof;

54 (4) The name of the owner of the building and, if the owner is not the applicant, that the
55 applicant is the actual and bona fide lessee of the premises;

56 (5) That the place or building in which is proposed to do business conforms to all applicable
57 laws of health, fire, and zoning regulations and is a safe and proper place or building not within
58 300 feet of a school or church measured from front door to front door, along the street or streets.
59 This requirement does not apply to a Class B license or to a place occupied by a beer licensee
60 so long as it is continuously so occupied. The prohibition against locating a proposed business in

61 a place or building within 300 feet of a school does not apply to a college or university that has
62 notified the commissioner, in writing, that it has no objection to the location of a proposed business
63 in a place or building within 300 feet of the college or university;

64 (6) That the applicant is not incarcerated and has not during the five years preceding the
65 date of said application been convicted of a felony;

66 (7) That the applicant is the only person in any manner pecuniarily interested in the
67 business so asked to be licensed and that no other person is in any manner pecuniarily interested
68 during the continuance of the license; and

69 (8) That the applicant has not during five years preceding the date of the application had
70 a nonintoxicating beer license revoked.

71 (b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license
72 may be issued only upon submission by the trustees or other persons in active control of the
73 activities of the trust relating to the distributor license of a true and correct copy of the written trust
74 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
75 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
76 section is confidential and is not a public record and is not available for release pursuant to the
77 West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

78 (c) The provisions and requirements of subsection (a) of this section are mandatory
79 prerequisites for the issuance and, if any applicant fails to qualify, the license shall be refused. In
80 addition to the information furnished in any application, the commissioner may make such
81 additional and independent investigation of each applicant, manager, and of the place to be
82 occupied as necessary or advisable and, for this reason, all applications, with license fee and
83 bond, must be submitted with all true and correct information. For the purpose of conducting such
84 independent investigation, the commissioner may withhold the granting or refusal to grant ~~such~~
85 the license for a 30-day period or until the applicant has completed the conditions set forth in this
86 section. If it ~~shall appear~~ appears that ~~such~~ the applicant and manager meet the requirements in

87 the code and the rules, including, but not limited to, being a suitable person of good reputation
88 and morals; having made no false statements or material misrepresentations; involving no hidden
89 ownership; and having no persons with an undisclosed pecuniary interest contained in ~~such~~ the
90 application; and if there are no other omissions or failures by the applicant to complete the
91 application, as determined by the commissioner, the commissioner shall issue a license
92 authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

93 (d) The commissioner may refuse a license to any applicant under the provisions of this
94 article if the commissioner is of the opinion:

95 (1) That the applicant or manager is not a suitable person to be licensed;

96 (2) That the place to be occupied by the applicant is not a suitable place or is within 300
97 feet of any school or church measured from front door to front door along the street or streets.
98 This requirement does not apply to a Class B licensee or to a place now occupied by a beer
99 licensee so long as it is continuously so occupied. The prohibition against locating any such place
100 within 300 feet of a school does not apply to a college or university that has notified the
101 commissioner, in writing, that it has no objection to the location of any such place within 300 feet;
102 ~~or~~

103 (3) That the manager is an active employee of the West Virginia Alcohol Beverage Control
104 Commission or the active employee of the West Virginia Alcohol Beverage Control Commission
105 is involved in the applicant's ownership, management, or employ; including an independent
106 contractor, or otherwise involved in any possible hidden ownership; or

107 ~~(3)~~ (4) That the license should not be issued for reason of conduct declared to be unlawful
108 by this article.

CHAPTER 16A. MEDICAL CANNABIS ACT.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

1 (a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In
2 making a decision under this subsection, the bureau shall determine that:

3 (1) The applicant will maintain effective control of and prevent diversion of medical
4 cannabis.

5 (2) The applicant will comply with all applicable laws of this state.

6 ~~(3) The applicant is a resident of this state as defined in §29-22B-327 of this code or is~~
7 ~~organized under the law of this state. If the applicant is a business entity, majority ownership in~~
8 ~~the business entity must be held by a state resident or residents~~

9 ~~(4)~~ (3) The applicant is ready, willing, and able to properly carry on the activity for which a
10 permit is sought.

11 ~~(5)~~ (4) The applicant possesses the ability to obtain in an expeditious manner sufficient
12 land, buildings, and equipment to properly grow, process, or dispense medical cannabis.

13 ~~(6)~~ (5) It is in the public interest to grant the permit.

14 ~~(7)~~ (6) The applicant, including the financial backer or principal, is of good moral character
15 and has the financial fitness necessary to operate.

16 ~~(8)~~ (7) The applicant is able to implement and maintain security, tracking, recordkeeping,
17 and surveillance systems relating to the acquisition, possession, growth, manufacture, sale,
18 delivery, transportation, distribution, or the dispensing of medical cannabis as required by the
19 bureau.

20 ~~(9)~~ (8) The applicant satisfies any other conditions as determined by the bureau.

21 (b) *Nontransferability.* — A permit issued under this chapter shall be nontransferable.

22 (c) *Privilege.* — The issuance or renewal of a permit shall be a revocable privilege.

23 (d) *Dispensary location.* — The bureau shall consider the following when issuing a
24 dispensary permit:

25 (1) Geographic location;

26 (2) Regional population;

- 27 (3) The number of patients suffering from serious medical conditions;
 - 28 (4) The types of serious medical conditions;
 - 29 (5) Access to public transportation;
 - 30 (6) Approval by local health departments;
 - 31 (7) Whether the county has disallowed the location of a grower, processor, or dispensary;
 - 32 and
 - 33 (8) Any other factor the bureau deems relevant.
- 34 (e) *Application procedure.* — The bureau shall establish a procedure for the fair and
35 objective evaluation of all applications for all medical cannabis organization permits. ~~Such~~ The
36 evaluations shall score each applicant numerically according to standards set forth in this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-327. Resident of this state defined.

1 [Repealed.]

§29-22B-503. Additional qualifications for an applicant for an operator's license.

1 (a) No operator's license or license renewal may be granted unless the Lottery
2 Commission has determined that, in addition to the general requirements set forth in §29-22B-
3 502 of this code, the applicant satisfies all of the following qualifications:

4 ~~(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States~~
5 ~~and a resident of this state for the four year period immediately preceding the application; or~~

6 ~~(B) If the applicant is a corporation, partnership or other business entity, the chief executive~~
7 ~~officer and the majority of the officers, directors, members and partners (to the extent each of~~
8 ~~these groups exists with respect to a particular business organization), both in number and~~
9 ~~percentage of ownership interest, have been citizens of the United States and residents of this~~
10 ~~state for the four year period immediately preceding the application~~

11 ~~(2)~~(1) The applicant has demonstrated the training, education, business ability, and
12 experience necessary to establish, operate, and maintain the business for which the license
13 application is made;

14 ~~(3)~~(2) The applicant has secured any necessary financing for the business for which the
15 license application is made, and the financing: (A) Is from a source that meets the qualifications
16 of this section; and (B) is adequate to support the successful performance of the duties and
17 responsibilities of the licensee. A licensee shall request commission approval of any change in
18 financing or leasing arrangements at least 30 days before the effective date of the change;

19 ~~(4)~~(3) The applicant has disclosed all financing or refinancing arrangements for the
20 purchase, lease, or other acquisition of video lottery terminals and associated equipment in the
21 degree of detail requested by the Lottery Commission;

22 ~~(5)~~(4) The applicant has filed with the Lottery Commission a copy of any current or
23 proposed agreement between the applicant and any manufacturer for the sale, lease, or other
24 assignment to the operator of video lottery terminals, the electronic computer components of the
25 terminals, the random number generators of the terminals, or the cabinets in which they are
26 housed; and

27 ~~(6)~~(5) The applicant does not hold any other license under this article, §19-23-1 et seq. of
28 this code, §29-22-1 et seq. of this code, §29-22A-1 et seq. of this code, or §29-25-1 et seq. of this
29 code, except that an applicant may also be licensed as a service technician. In addition, an
30 applicant may also be licensed as a limited video lottery retailer: *Provided*, That a licensed
31 operator that also is a licensed retailer may operate limited video lottery terminals as a limited
32 video lottery retailer at no more than 10 locations: *Provided, however*, That the director may
33 authorize the operator to operate limited video lottery terminals as a limited video lottery retailer
34 at more than 10 locations if the applicant provides sufficient justification that such approval is
35 necessary to sustain state revenues without a detrimental impact on public interest, further shows
36 that a qualified retailer is unavailable and a good faith effort to identify a qualified retailer was

37 made prior to the request, and an explanation of other relevant information supporting ~~such~~ the
38 request.

39 (b)(1) A person or a member of his or her immediate family who has an ownership interest
40 in a business entity that submits an application for an operator's license may not: (A) Submit an
41 application for another operator's license as an individual; (B) serve as an officer, director,
42 member, or partner of a business entity that submits an application for another operator's license;
43 or (C) have an ownership interest in any other business entity that submits an application for an
44 operator's license.

45 (2) Business entities that have common owners or common officers, directors, members,
46 or partners may not hold more than one operator's license.

**§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's
license.**

1 No limited video lottery retailer's license or license renewal may be granted unless the
2 Lottery Commission has determined that, in addition to the general requirements set forth in §29-
3 22B-502 of this code, the applicant satisfies all of the following qualifications:

4 ~~(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States
5 and a resident of this state for the four year period immediately preceding the application;~~

6 ~~(B) If the applicant is a corporation, partnership or other business entity, the chief executive
7 officer and the majority of the officers, directors, members and partners (to the extent each of
8 these groups exists with respect to a particular business organization), both in number and
9 percentage of ownership interest, have been citizens of the United States and residents of this
10 state for the four year period immediately preceding the application;~~

11 ~~(2)(1)~~ The applicant has disclosed to the Lottery Commission the identity of each person
12 who has control of the applicant, as control is described in §29-22B-507 of this code;

13 ~~(3)(2)~~ The applicant holds either: (A) A valid license issued under §60-7-1 et seq. of this
14 code to operate a private club; (B) a valid Class A license issued under §11-16-1 et seq. of this

15 code to operate a business where nonintoxicating beer is sold for consumption on the premises;
16 or (C) both licenses;

17 ~~(4)~~(3) The applicant has demonstrated the training, education, business ability, and
18 experience necessary to establish, operate and maintain the business for which the license
19 application is made;

20 ~~(5)~~(4) The applicant has secured any necessary financing for the business for which the
21 license application is made and the financing: (A) Is from a source that meets the qualifications
22 of this section; and (B) is adequate to support the successful performance of the duties and
23 responsibilities of the licensee;

24 ~~(6)~~(5) The applicant has disclosed all financing or refinancing arrangements for placement
25 on the applicant's premises of video lottery terminals and associated equipment in the degree of
26 detail requested by the Lottery Commission;

27 ~~(7)~~(6) The applicant has filed with the Lottery Commission a copy of any current or
28 proposed agreement between the applicant and a licensed operator for the placement on the
29 applicant's premises of video lottery terminals;

30 ~~(8)~~(7) The applicant has filed with the Lottery Commission a copy of any current or
31 proposed agreement between the applicant and a licensed operator or other person for the
32 servicing and maintenance of video lottery terminals by licensed service technicians; and

33 ~~(9)~~(8) The applicant does not hold any other license under this article, §19-23-1 et seq. of
34 this code, or §29-22A-1 *et seq.* of this code, or §29-25-1 *et seq.* of this code except that an
35 applicant may also be licensed as a service technician. In addition, an applicant may also be
36 licensed as an operator, subject to the provisions of §29-22B-503(a)(6) of this code.

§29-22B-512. Review of continuing eligibility for license.

1 The Lottery Commission shall determine on a continuing basis the eligibility of licensees
2 to hold a license. ~~Notwithstanding any other provision of this article, each operator and limited~~
3 ~~video lottery retailer shall meet the residency requirements in sections 22B-503 and 22B-504~~

4 of this article and shall be a resident of this state during the period in which the licensed issued
5 for the operator or limited video lottery retailer is in effect.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 "Alcohol" ~~shall~~ means ethyl alcohol whatever its origin and shall include synthetic ethyl
3 alcohol but not denatured alcohol.

4 "Alcoholic liquor" includes alcohol, beer, wine, and spirits and any liquid or solid capable
5 of being used as a beverage, but shall not include nonintoxicating beer.

6 "An agency" means a drugstore, grocery store, or general store designated by the
7 commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control
8 Commission.

9 "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any
10 other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

11 "Brewery" means an establishment where beer is manufactured or in any way prepared.

12 "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control
13 Commissioner.

14 "Department" means the organization through which the commission exercises powers
15 imposed upon it by this chapter.

16 "Distillery" means an establishment where alcoholic liquor other than wine or beer is
17 manufactured or in any way prepared.

18 "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point
19 where physical or mental control or both are markedly diminished.

20 “Manager” means an individual who is an applicant’s or licensee’s on-premises employee,
21 member, partner, shareholder, director, or officer who meets licensure requirements of Chapter
22 60 of this code, and the legislative rules and who actively manages, conducts and carries on the
23 day-to-day operations of the applicant or licensee with full and apparent authority or actual
24 authority to act on behalf of the applicant or licensee, including, but not limited to, coordinating
25 staffing; reviewing, and approving payroll; ordering and paying for inventory, such as
26 nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security
27 systems, video and other security equipment, and any further acts or actions involved in managing
28 the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or
29 directors. Further that the manager may not be an active employee of the West Virginia Alcohol
30 Beverage Control Commissioner or the active employee of the West Virginia Alcohol Beverage
31 Control Commissioner, may not be involved in an applicant’s or licensee’s ownership,
32 management, or employ, including an independent contractor, and any possible hidden
33 ownership;

34 “Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend,
35 bottle, or fill an original package with any alcoholic liquor.

36 “Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, and
37 among others includes a distiller, a rectifier, a wine maker, and a brewer.

38 “Nonintoxicating beer” means any beverage obtained by the fermentation of barley, malt,
39 hops, or similar products or substitute, and containing not more alcohol than that specified by
40 §11-16-2 of this code.

41 “Original package” means any closed or sealed container or receptacle used for holding
42 alcoholic liquor.

43 “Person” means an individual, firm, partnership, limited partnership, corporation, or
44 voluntary association.

45 “Powdered alcohol” means an alcohol manufactured in a powder or crystalline form for
46 either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter,
47 powdered alcohol excludes any material intended for industrial purposes.

48 “Public place” means any place, building, or conveyance to which the public has, or is
49 permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and
50 corridors of hotels and any highway, street, lane, park, or place of public resort or amusement:
51 *Provided*, That the term “public place” shall not mean or include any of the above-named places
52 or any portion or portions thereof which qualify and are licensed under the provisions of this
53 chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the
54 term “public place” shall not mean or include any legally demarcated area designated solely for
55 the consumption of beverages and freshly prepared food that directly connects and adjoins any
56 portion or portions of a premise that qualifies and is licensed under the provisions of this chapter
57 to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term “public place”
58 shall not include a facility constructed primarily for the use of a Division I, II, or III college or
59 university that is a member of the National Collegiate Athletic Association, or its successor, and
60 used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which
61 holds a special license to sell wine pursuant to the provisions of §60-8-3 of this code, in the
62 designated areas of sale and consumption of wine and other restrictions established by that
63 section and the terms of the special license issued thereunder.

64 “Sale” means any transfer, exchange, or barter in any manner or by any means, for a
65 consideration, and shall include all sales made by principal, proprietor, agent, or employee.

66 “Selling” includes solicitation or receipt of orders; possession for sale; and possession with
67 intent to sell.

68 “Spirits” means any alcoholic beverage obtained by distillation and mixed with potable
69 water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

70 “State liquor store” means a store established and operated by the commission under this
71 chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

72 “Wine” means any alcoholic beverage obtained by the fermentation of the natural content
73 of fruits, or other agricultural products, containing sugar.

74 “Winery” means an establishment where wine is manufactured or in any way prepared.

75 ~~“Spirits” means any alcoholic beverage obtained by distillation and mixed with potable~~
76 ~~water and other substances in solution and includes brandy, rum, whiskey, cordials and gin.~~

77 ~~“Alcoholic liquor” includes alcohol, beer, wine and spirits and any liquid or solid capable of~~
78 ~~being used as a beverage, but shall not include nonintoxicating beer.~~

79 ~~“Original package” means any closed or sealed container or receptacle used for holding~~
80 ~~alcoholic liquor.~~

81 ~~“Sale” means any transfer, exchange, or barter in any manner or by any means, for a~~
82 ~~consideration, and shall include all sales made by principal, proprietor, agent or employee.~~

83 ~~“Selling” includes solicitation or receipt of orders; possession for sale; and possession with~~
84 ~~intent to sell.~~

85 ~~“Person” means an individual, firm, partnership, limited partnership, corporation, or~~
86 ~~voluntary association.~~

87 ~~“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend,~~
88 ~~bottle, or fill an original package with any alcoholic liquor.~~

89 ~~“Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, and~~
90 ~~among others includes a distiller, a rectifier, a wine maker, and a brewer.~~

91 ~~“Brewery” means an establishment where beer is manufactured or in any way prepared.~~

92 ~~“Winery” means an establishment where wine is manufactured or in any way prepared.~~

93 ~~“Distillery” means an establishment where alcoholic liquor other than wine or beer is~~
94 ~~manufactured or in any way prepared.~~

95 ~~“Public place” means any place, building, or conveyance to which the public has, or is~~
96 ~~permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and~~
97 ~~corridors of hotels and any highway, street, lane, park, or place of public resort or amusement:~~
98 ~~*Provided*, That the term “public place” shall not mean or include any of the above named places~~
99 ~~or any portion or portions thereof which qualify and are licensed under the provisions of this~~
100 ~~chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the~~
101 ~~term “public place” shall not mean or include any legally demarcated area designated solely for~~
102 ~~the consumption of beverages and freshly prepared food that directly connects and adjoins any~~
103 ~~portion or portions of a premises that qualifies and is licensed under the provisions of this chapter~~
104 ~~to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term “public place”~~
105 ~~shall also not include a facility constructed primarily for the use of a Division I college that is a~~
106 ~~member of the National Collegiate Athletic Association, or its successor, and used as a football,~~
107 ~~basketball, baseball, soccer or other Division I sports stadium which holds a special license to sell~~
108 ~~wine pursuant to the provisions of §60-8-3 of this code, in the designated areas of sale and~~
109 ~~consumption of wine and other restrictions established by that section and the terms of the special~~
110 ~~license issued thereunder.~~

111 ~~“State liquor store means a store established and operated by the commission under this~~
112 ~~chapter for the sale of alcoholic liquor in the original package for consumption off the premises.~~

113 ~~“An agency” means a drugstore, grocery store, or general store designated by the~~
114 ~~commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control~~
115 ~~Commissioner.~~

116 ~~“Department” means the organization through which the commission exercises powers~~
117 ~~imposed upon it by this chapter.~~

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

120 ~~“Intoxicated” means having one’s faculties impaired by alcohol or other drugs to the point~~
121 ~~where physical or mental control or both are markedly diminished.~~

122 ~~“Powdered alcohol” means an alcohol manufactured in a powder or crystalline form for~~
123 ~~either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter,~~
124 ~~powdered alcohol excludes any material intended for industrial purposes~~

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

1 (a) Prior to or simultaneously with the submission of a bid for a retail license or the payment
2 of a purchase option for a Class A retail license, each applicant shall file an application with the
3 commissioner, stating under oath, the following:

4 (1) If the applicant is an individual, his or her name and residence address;

5 (2) If the applicant is other than an individual, the name and business address of the
6 applicant; the state of its incorporation or organization; the names and residence addresses of
7 each executive officer and other principal officer, partner, or member of the entity; a copy of the
8 entity’s charter or other agreement under which the entity operates; and the names and residence
9 addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock,
10 partnership, or other interests in the applicant; and all applicants and licensees must list a
11 manager on the applicant’s license application, or a licensee’s renewal application, and further
12 that the manager shall meet all other requirements of licensure, including, but not limited to, United
13 States citizenship or naturalization, passing a background investigation, being at least 21 years
14 of age, being a suitable person, being of good morals and character, and other requirements, all
15 as set forth in the code and the legislative rules, in order for the manager to be able to meet and
16 conduct any regulatory matters, including, but not limited to, licensure or enforcement matters
17 related to the applicant or licensee all in the interest of protecting public health and safety and
18 being a suitable applicant or licensee. In order to maintain active licensure, any change by a

19 licensee in any manager listed on an application must be made immediately to the commissioner,
20 in order to verify that the new manager meets licensure requirements;

21 (3) That the applicant and manager ~~has~~ have never been convicted in this state or any
22 other state of any felony or other crime involving moral turpitude or convicted of any felony in this
23 or any other state court or any federal court for a violation of any state or federal liquor law, and
24 if the applicant is other than an individual, that none of its executive officers, other principal
25 officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of
26 the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

27 (4) That the applicant and the manager, each is a United States citizen of good moral
28 character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized
29 and authorized to do business under the laws of this state, when and where incorporated, with
30 the name and address of each officer; that each officer is a citizen of the United States and a
31 person of good moral character; and if a firm, association, partnership, or limited partnership, that
32 each member is a citizen of the United States and, if a naturalized citizen, when and where
33 naturalized, each of whom must sign the application.

34 (b) An applicant and manager shall provide the commissioner any additional information
35 requested by the commissioner including, but not limited to, authorization to conduct a criminal
36 background and credit records check.

37 (c) Whenever a change occurs in any information provided to the commissioner, the
38 change shall immediately be reported to the commissioner in the same manner as originally
39 provided.

40 (d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-
41 10 of this code and no applicant shall be issued or eligible to hold a retail license under this article,
42 if:

43 (1) The applicant has been convicted in this state of any felony or other crime involving
44 moral turpitude or convicted of any felony in this or any other state court or any federal court for
45 a violation of any state or federal liquor law; or

46 (2) Any executive officer or other principal officer, partner, or member of the applicant, or
47 any person owning, directly or indirectly, at least twenty percent of the outstanding stock,
48 partnership, or other interests in the applicant, has been convicted in this state of any felony or
49 other crime involving moral turpitude or convicted of any felony in this or any other state court or
50 any federal court for a violation of any state or federal liquor law.

51 (e) The commissioner shall not issue a retail license to an applicant which does not hold
52 a license issued pursuant to federal law to sell liquor at wholesale.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

3 (1) The name and residence of the applicant and list the same for its manager;

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

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

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

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

11 (6) A listed manager on the applicant's license application, or a licensee's renewal
12 application, and further that the manager shall meet all other requirements of licensure, including.

13 but not limited to, United States citizenship or naturalization, passing a background investigation,
14 being at least 21 years of age, being a suitable person, being of good morals and character, being
15 capable of operating a bona fide private club of good reputation in the community, and other
16 requirements, all as set forth in the code and the legislative rules, in order for the manager to be
17 able to meet and conduct any regulatory matters, including, but not limited to: Licensure or
18 enforcement matters related to the applicant or licensee all in the interest of protecting public
19 health and safety and being a suitable applicant or licensee. In order to maintain active licensure,
20 any change by a licensee in any manager listed on an application shall be made immediately to
21 the commissioner, in order to verify that the new manager meets licensure requirements;

22 (7) The name or names of any national organizations with which the applicant is affiliated
23 and the nature of ~~such~~ the affiliation;

24 ~~(7)~~(8) The size and nature of the dining and kitchen facilities operated by applicant;

25 ~~(8)~~(9) Accurate and complete ownership information;

26 ~~(9)~~(10) An attestation that the information in the application is true and accurate; and

27 ~~(10)~~(11) Such other information as the commissioner may reasonably require of the
28 applicant and manager which shall include, but not be limited to, the criminal records, if any, of
29 each member of the applicant's governing board ~~and~~/or its officers and directors who have been
30 convicted of a felony or a crime involving moral turpitude.

31 (b) The application shall be verified by the manager, each member of the governing board
32 of the applicant if an unincorporated association, or, if the applicant is a corporation, by each of
33 its officers and all members of its board of directors. The application shall be accompanied by the
34 license fee hereinafter prescribed and by a bond of the applicant in the penal sum of \$5,000 with
35 a corporate surety authorized to transact business in the state of West Virginia, payable to the
36 State of West Virginia, which bond shall be conditioned on the payment of all fees herein
37 prescribed and on the faithful performance of and compliance with the provisions of this article.

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

40 (d) No license to operate a private club ~~will~~ may be issued to applicants who discriminate
41 against any person or group of persons because of race or color of ~~such~~ the person or group of
42 persons.

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

1 (a) Upon receipt of a completed application referred to in §60-7-4 of this code, together
2 with the accompanying fee and bond, the commissioner shall conduct an investigation to
3 determine the accuracy of the matters contained in such completed application and whether
4 applicant is a bona fide private club of good reputation in the community in which it shall operate.
5 For the purpose of conducting such investigation, the commissioner may withhold the granting or
6 refusal to grant ~~such~~ the license for a period not to exceed 30 days or until the applicant has
7 completed the conditions set forth in this article and in §60-7-4(a) of this code, all as determined
8 by the commissioner. If it ~~shall appear~~ appears that ~~such~~ the applicant is a bona fide private club
9 of good reputation in the community in which it shall operate and that the applicant and the
10 manager in the application or a licensee and manager in the renewal application, subject to
11 investigation set forth in §60-7-4 of this code, have made ~~there is~~ no false statement, no material
12 misrepresentations, no hidden ownership, or persons with an undisclosed pecuniary interest, and
13 no omissions or failures to disclose in ~~such~~ the application, as determined by the commissioner,
14 ~~he or she~~ shall issue a license authorizing the applicant to sell alcoholic liquors as provided in
15 §60-7-3 of this code, and otherwise shall refuse to issue ~~such~~ the license, except that in the case
16 of an application by a corporation or association to operate a private club in connection with:

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

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

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

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

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

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

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

ARTICLE 8. SALE OF WINES.

§60-8-16. Application for license.

1 (a) Any person desiring a license under this article shall file a written application for a
2 license with the commissioner and in the application shall state under oath:

3 (1) The name of the applicant, including his or her trade name if any, his or her residence
4 address and the length of his or her residence ~~within this state;~~

5 (2) The address of the place of business for which the license is desired, or other
6 description that definitely locates it; and that the place of business conforms to all health and fire
7 laws and regulations applicable thereto;

8 (3) The name of the owner of the premises upon which the business is to be conducted
9 and, if the owner is not the applicant, that ~~such~~ the applicant is the bona fide lessee of the
10 business;

11 (4) If the application is for a retailer's license, that the applicant is the proprietor or owner
12 of a bona fide grocery store, private wine bed and breakfast, private wine restaurant, private wine
13 spa, or wine specialty shop;

14 (5) That the applicant intends to carry on the business authorized by the license for himself
15 or herself or under his or her immediate supervision or direction;

16 (6) That the applicant is a citizen of the United States;

17 (7) That the applicant ~~is an actual bona fide resident of the State of West Virginia, except~~
18 ~~for those applicants applying for a supplier's license or a direct shipper's license~~ shall include a
19 manager on the applicant's license application, or a licensee's renewal application, and further
20 that the manager shall meet all other requirements of an applicant for licensure set forth in this
21 section, including, but not limited to, United States citizenship or naturalization, passing a
22 background investigation, being at least 21 years of age, being a suitable person, being of good
23 morals and character, and other requirements, all as set forth in the code and the legislative rules,
24 in order for the manager to be able to meet and conduct any regulatory matters, including, but not
25 limited to: Licensure or enforcement matters related to the applicant or licensee all in the interest
26 of protecting public health and safety and being a suitable applicant or licensee. In order to
27 maintain active licensure, any change by a licensee in any manager listed on an application must
28 be made immediately to the commissioner, in order to verify that the new manager meets
29 licensure requirements;

30 (8) That the applicant is not less than ~~eighteen~~ 21 years of age;

31 (9) That the applicant has not been convicted of a felony or other crime involving moral
32 turpitude within the three years next preceding the filing of the application; and that he or she has
33 not, within the two years next preceding the filing of the application, been convicted of violating
34 the liquor laws of any state or of the United States;

35 (10) That the applicant has not during the five years next preceding the date of said
36 application had any license revoked under this chapter or under the liquor laws of any other state;

37 (11) If the applicant is a firm, association, partnership, limited partnership, limited liability
38 company, or corporation, the application shall state the matters required in subdivisions (6), (7),
39 (8), (9), and (10) of this subsection, with respect to each of the members and the manager thereof,
40 and each of said members and the manager must meet all the requirements in said subdivisions;

41 (12) If the applicant is a corporation, organized or authorized to do business in this state,
42 the application shall state the matters required in subdivisions (6), ~~(7),~~(8), (9), and (10) of this
43 subsection, with respect to the manager and each of the officers and directors thereof, and any
44 stockholder owning 20 percent or more of the stock of ~~such~~ the corporation and any other ~~the~~
45 persons who conduct and manage the licensed premises for the corporation. Each of said
46 individuals must meet all the requirements provided in those subdivisions except that the
47 requirements as to citizenship ~~and residence shall~~ may not apply to the officers, directors, and
48 stockholders of a corporation applying for a retailer's license; and

49 (13) If the applicant is a trust or has a trust as an owner, the trustees or other persons in
50 active control of the activities of the trust relating to the license shall provide a certification of trust
51 as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts
52 described in §44D-10-1013(e) of this code and shall further state, under oath, the names,
53 addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify
54 that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of
55 age, the certification of trust must state that the beneficiary's interest in the trust is represented
56 by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on

57 behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is
58 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee,
59 parent, or legal guardian include in the certification of trust and state under oath his or her name,
60 address, Social Security number, and birth date.

61 (14) Any other information that the commissioner may reasonably require of the applicant,
62 or licensee, or the applicant or licensee's manager.

63 The foregoing statements required in an application are mandatory prerequisites for the
64 issuance of a license.

65 The application must be verified by the owner, manager, or in the case of a firm,
66 partnership, limited partnership, limited liability company, association, or trust, the members,
67 officers, trustees, or other persons in active control of the activities of the limited liability company,
68 association, or trust relating to the license. The application of a corporation applying for a retailer's
69 license need be verified only by its president or vice president.

70 (b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license
71 may be issued only upon submission by the trustees or other persons in active control of the
72 activities of the trust relating to the distributor license of a true and correct copy of the written trust
73 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
74 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
75 section is confidential and is not a public record and is not available for release pursuant to the
76 West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

§60-8-17. License issuance or refusal; terms of license.

1 (a) Upon receipt of the completed application, fee, and bond if required, the commissioner
2 shall conduct any investigation he or she considers necessary to determine the accuracy of the
3 matters contained in the completed application for the applicant or manager. For the purposes of
4 conducting such investigation, the commissioner may withhold the granting or refusal to grant a
5 license for a period not to exceed 30 days or until the applicant has completed the conditions set

6 forth in §60-8-16 of this code. If it appears that the applicant, and the manager in the application
7 or a licensee and manager in the renewal application, subject to investigation set forth in this
8 section, is a suitable person, is located at a suitable premise, there is no false statement, no
9 material misrepresentations, no hidden ownership, no persons with an undisclosed pecuniary
10 interest contained in the application, and that the issuance of the license would not be in conflict
11 with any of the provisions of this chapter, the commissioner shall issue the license. Otherwise the
12 commissioner shall refuse to issue ~~such~~ the license.

13 (b) The commissioner shall refuse the license of any applicant if he or she finds that any
14 such applicant or manager is not a suitable person, that the place of business of ~~such~~ the applicant
15 is not a suitable place, or that ~~such~~ the applicant has not complied with the provisions of this
16 chapter. Upon refusal to issue ~~such~~ the license, the commissioner shall enter an order refusing
17 such application. The refusal is final unless a hearing is requested in accordance with the
18 provisions of §60-8-18 of this code. When ~~such~~ the refusal becomes final the commissioner shall
19 immediately refund to the applicant his or her fees and bond accompanying the application.

20 (c) The license expires on June 30 next following the date it was issued and may be
21 renewed upon the same showing as required for the issuance of the initial license, together with
22 the payment of fee and filing of any bond required by this article.

23 (d) A licensee that fails to complete a renewal application and make payment of its annual
24 license fee in renewing its license on or before June 30 of any subsequent year, after initial
25 application, shall be charged an additional \$150 reactivation fee. The licensee must pay the
26 applicable full-year annual license fee and the reactivation fee prior to the processing of any
27 renewal application. A licensee who continues to operate upon the expiration of its license is
28 subject to all fines, penalties, and sanctions available in §11-16-23 of this code, as determined by
29 the commissioner.

30 (e) ~~Such~~ The license shall may not be transferred to another person, but the location of
31 the premises to which the license relates may be changed with the written consent of the

- 32 commissioner, if the new location satisfies the requirements of this article upon an initial
33 application and payment of a new application fee.

NOTE: The purpose of this bill is to address the residency issue that was struck down under the Dormant Commerce Clause by the US Supreme Court in *Tennessee Wine and Spirits Retailers Assn. v. Russel F. Thomas, Executive Director of the Tennessee Alcoholic Beverage Commission, et al.*, No. 18-96 (U.S. June 26, 2019).

While West Virginia does not have the same restrictions set forth in Tennessee, the WVABCA under current law requires a 2-year resident manager for applicants and licensees who are not residents. By the US Supreme Court's application of the Dormant Commerce Clause (essentially you cannot restrict out-of-state interest to protect or assist in-state interests), the court held the durational residency requirement in Tennessee was struck down but that the state could restrict licensees by not discriminating against nonresidents by, for example, limiting the number of retail licenses and limiting the amount of alcohol that may be sold to an individual, mandating more extensive training for managers, employees or monitor retailer practices and taking action against those who violate the law. The case notes that the state can regulate in the area of public health and safety.

WVDHHR is simply removing the residency requirements from the Medical Cannabis Act; the WV Lottery is removing residency and also removing US citizenship requirements from its statutes, and the WVABCA is revising its current residency and manager requirements by simply requiring all licensees to have a manager readily available to address licensure, enforcement and public health and safety issues with the WVABCA or its agents. The WVABCA would also like to prohibit WVABCA employees from being managers or owners of WVABCA licensed establishments.

Note other technical changes were made to reflect consistency with current code, such as adding Division II or III schools per SB 511 and SB 561 of the 2019 Regular Session to the definition of public place and other bill drafting technical requirements for oxford commas, renumbering and organizing code sections.

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