

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4848

BY DELEGATES STEELE, DEAN, SMITH AND YOUNG

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to repeal §60-7-17 of the Code of West Virginia, 1931, as amended; to amend said code
2 by adding thereto a new section, designated §11-16-5a, to amend and reenact §11-16-
3 6d, §11-16-6f, and §11-16-8 of said code; to amend said code by adding thereto a new
4 section designated §60-1-3a; to amend said code by adding thereto a new section,
5 designated §60-3-26; to amend and reenact §60-3A-3a, §60-3A-3b, §60-3A-8, and §60-
6 3A-17 of said code; to amend and reenact §60-4-22 and §60-4-23 of said code; to amend
7 and reenact §60-6-24 of said code; to amend and reenact §60-7-2, §60-7-6, §60-7-8a,
8 and 60-7-8f of said code; to amend said code by adding thereto a new section designated
9 §60-7-2a; to amend and reenact §60-8-6c, §60-8-6e, and §60-8-6f of said code; and to
10 amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, wine, and
11 liquor licenses and requirements; clarifying that licenses are not required to place
12 nonintoxicating beer, wine, and liquor in a bag after purchase; removing requirement that
13 servers at a sampling have specific knowledge of the West Virginia product being
14 sampled; providing for modification of the 300 foot requirement to 200 feet with the option
15 for a college, university, or church to provide a written waiver; directing the Commissioner
16 of the Alcoholic Beverage Control Administration to discontinue the state's acquisition of
17 alcoholic liquors manufactured in the Russian Federation or by any person or entity
18 located therein; establishing duration of the ban; authorizing the commissioner, at the
19 Governor's direction, to sell or auction alcoholic liquors made in the Russian Federation
20 or under the authority of a business located within the federation with the proceeds going
21 to charitable organizations assisting the people of Ukraine; increasing the maximum
22 convenience fee charge for delivery of nonintoxicating beer and alcoholic liquors to \$20;
23 removing delivery provisions requiring storage of a scanned image of legal identification
24 but requiring review of legal identification for nonintoxicating beer and alcoholic liquors;
25 increasing the markup to private clubs from 110 percent to 115 percent; clarifying licensure
26 requirements for nonintoxicating beer and alcoholic liquors; clarifying licensure
27 requirements for wholesale representatives; removing prohibition against an elected

28 official or his or her relative being employed as a wholesale representative; repealing an
29 exotic entertainment; revising the blood alcohol chart; creating a license for a private
30 bakery to produce confections with alcohol added, setting forth license requirements and
31 setting a license fee; creating a license for a private cigar shop to, where legally
32 permissible, permit the sale of alcohol, food, and cigars for on-premises consumption,
33 setting forth license requirements and setting a license fee; creating a license for a private
34 college sports stadium for alcohol sales in certain areas of Division I, II, or III sports
35 stadiums, setting forth license requirements, and setting a license fee; allowing private
36 multi-sport complex to also serve nonintoxicating beer and nonintoxicating craft beer from
37 a golf cart; creating a license for a private food truck to conduct food and alcohol sales at
38 various locations where permitted by a county or municipality, setting forth license
39 requirements and setting a license fee; permitting private hotels and private resort hotels
40 to apply for a private caterer license; authorizing private hotels and private resort hotels to
41 utilize in-room mini bars for limited nonintoxicating beer and alcoholic liquor sales to adults
42 21 years of age or over, and setting forth requirements; removing language automatically
43 repealing inconsistent code language; authorizing wine growler sales where wine may be
44 mixed with ice and water by the licensee to produce a frozen alcoholic beverage for sale
45 by the licensee in sealed wine growlers, and additional requirements; and providing
46 additional exceptions to the criminal penalty for the unlawful admission of children to a
47 dance house or other places of entertainment for certain private clubs with an age
48 verification system.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-5a. Off-premises sales not required to be bagged.

1 A licensee who is licensed for off-premises sales of nonintoxicating beer or nonintoxicating
2 craft beer is not required to place nonintoxicating beer or nonintoxicating craft beer, in a bag.

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

1 (a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
2 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
3 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a
4 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
5 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer
6 is permitted for off-premises consumption when completed by the licensee or the licensee's
7 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by
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 shall meet the requirements of this section. The order, sale, and delivery process is
12 subject to the penalties of this article.

13 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales
14 or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
15 for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer
16 or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed
17 growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating
18 beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A
19 retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer
20 through telephone orders, a mobile ordering application, or a web-based software program. The
21 annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third
22 party entity, with no limit on the number of drivers and vehicles. The delivery license fee under
23 this subsection may not be prorated nor refunded.

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

27 (d) *Sale Requirements.* —

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

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

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

40 (4) An order, sale, or delivery consisting of multiple meals shall not amount to any
41 combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating
42 beer or nonintoxicating craft beer; and

43 (5) A third party delivery licensee may not have a pecuniary interest in a Class A retail
44 dealer, as set forth in this article, therefore a third party delivery licensee may only charge a
45 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The
46 third party licensee may not collect a percentage of the delivery order for the delivery of alcohol,
47 but may continue to collect a percentage of the delivery order directly related to the prepared food
48 or a meal. The convenience fee charged by the third party delivery licensee to the person
49 purchasing may not be greater than \$20 per delivery order where nonintoxicating beer or

50 nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also
51 licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler
52 delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and
53 delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed

54 (e) *Delivery Requirements.* —

55 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating
56 craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party
57 delivery licensee shall file each delivery person's name, driver's license, and vehicle information
58 with the commissioner;

59 (2) A Class A retail dealer or third party delivery licensee shall train delivery persons on
60 verifying legal identification and in identifying the signs of intoxication and shall submit certification
61 of the training to the commissioner;

62 (3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation
63 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft
64 beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an
65 electronic copy of his or her permit;

66 (4) A Class A retail dealer or third party delivery licensee may only deliver prepared food
67 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or
68 contiguous counties where the Class A retail dealer is located;

69 (5) A Class A retail dealer or third party delivery licensee may only deliver prepared food
70 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in
71 West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all
72 sales and municipal taxes;

73 (6) A Class A retail dealer or third party delivery licensee may not deliver prepared food
74 or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

75 (7) A Class A retail dealer or third party delivery licensee may only deliver prepared food
76 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not
77 for resale; and

78 (8) A Class A retail dealer or third party delivery licensee shall not deliver and leave
79 prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any
80 address without verifying a person's age and identification as required by this section.

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

82 (1) The delivery person may only permit the person who placed the order through a
83 telephone, mobile ordering application, or web-based software to accept the prepared food or a
84 meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age
85 verification upon delivery with the delivery person's visual review and age verification;

86 (2) Any mobile ordering application or web-based software used shall create a stored
87 record and image of the purchasing person's legal identification and details of the sale, accessible
88 by the delivery person for verification, and shall include the delivery driver's name and vehicle
89 information and delivery shall be subject to legal identification verification;

90 (3) Any telephone ordering system shall maintain a log or record of the purchasing
91 person's legal identification and details of the sale, accessible by the delivery person for
92 verification, and shall include the delivery driver's name and vehicle information and delivery shall
93 be subject to legal identification verification;

94 (4) All records are subject to inspection by the commissioner. A Class A retail dealer or
95 third party delivery licensee shall retain all records for three years, and may not unreasonably
96 withhold the records from the commissioner's inspection; and

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

99 (g) *Retail Transportation Permit.* —

100 (1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail
101 transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating
102 craft beer.

103 (2) A Class A retail dealer or a third party licensee shall apply for a permit and provide
104 vehicle and driver information, as required by the commissioner. Upon any change in vehicles or
105 drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver
106 information with the commissioner within 10 days of the change.

107 (h) *Enforcement.* —

108 (1) A Class A retail dealer or third party delivery licensee are responsible for any violations
109 committed by their employees or independent contractors under this article, and more than one
110 violation may be issued for a single violation involving multiple Class A retail dealers or licensees,
111 employees, or independent contractors.

112 (2) A license or permit granted by this section is subject to the penalties of probation,
113 monetary fines, suspension, and revocation, as set forth in this article, for violations committed
114 by the Class A retail dealer or third party delivery licensee, its employees, or independent
115 contractors.

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

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

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

1 (a) A Class B 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 by a
8 telephone, a mobile ordering application, or web-based software program, as authorized by the
9 licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a
10 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
11 process shall meet the requirements of this section. The order, sale, and delivery process is
12 subject to the penalties of this article.

13 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales
14 or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
15 for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer
16 or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed
17 growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating
18 beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B
19 retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer
20 through a telephone order, a mobile ordering application, or web-based software program. The
21 nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third
22 party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under
23 this subsection may not be prorated nor refunded.

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

27 (d) *Sale Requirements.* —

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

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

35 (3) Food, for purposes of this section, means food that has been cooked, microwaved, or
36 that is pre-packaged food from the manufacturer;

37 (4) An order, sale, or delivery consisting of food and any combination of sealed
38 nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess
39 of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

40 (5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail
41 dealer, as set forth in this article. A third party delivery licensee may only charge a convenience
42 fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party
43 licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer
44 or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly
45 related to food. The convenience fee charged by the third party delivery licensee to the purchasing
46 person may not be greater than \$20 per delivery order. For any third party licensee also licensed
47 for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale,
48 and delivery of sealed wine may not exceed \$20.

49 (e) *Delivery Requirements.* —

50 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating
51 craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall
52 file each delivery person's name, driver's license, and vehicle information with the commissioner;

53 (2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying
54 legal identification and in identifying the signs of intoxication and submit the certification of the
55 training to the commissioner;

56 (3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation
57 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft
58 beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an
59 electronic copy of his or her permit as proof of the licensure;

60 (4) A Class B retail dealer and a third party licensee may deliver food and sealed
61 nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail
62 dealer is located;

63 (5) A Class B retail dealer and a third party licensee may only deliver food and sealed
64 nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class
65 B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

66 (6) A Class B retail dealer and a third party licensee may not deliver food and
67 nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

68 (7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are
69 only for personal use, and not for resale; and

70 (8) A Class B retail dealer and a third party licensee shall not deliver and leave food and
71 sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a
72 person's age and identification as required by this section.

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

74 (1) The delivery person may only permit the person who placed the order through a
75 telephone, mobile ordering application, or web-based software to accept the food and
76 nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age
77 verification upon delivery with the delivery person's visual review and age verification;

78 (2) Any mobile ordering application or web-based software used must create a stored
79 record and image of the purchasing person's legal identification and details of the sale, accessible
80 by the delivery person for verification, and shall include the delivery driver's name and vehicle
81 information and delivery shall be subject to legal identification verification;

82 (3) Any telephone ordering system shall maintain a log or record of the purchasing
83 person's legal identification and details of the sale, accessible by the delivery person for
84 verification, and shall include the delivery driver's name and vehicle information and delivery shall
85 be subject to legal identification verification;

86 (4) All records are subject to inspection by the commissioner. A Class B retail dealer and
87 a third party licensee shall retain all records for three years, and may not unreasonably withhold
88 the records from the commissioner's inspection; and

89 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be
90 issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

91 (g) *Retail Transportation Permit.* —

92 (1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail
93 transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

94 (2) A Class B retail dealer or a third party licensee shall apply for a permit and provide
95 vehicle and driver information, required by the commissioner. Upon any change in vehicles or
96 drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver
97 information with the commissioner within 10 days of the change.

98 (h) *Enforcement.* —

99 (1) The Class B retail dealer and a third party licensee are responsible for any violations
100 committed by their employees or independent contractors under this article, and more than one
101 violation may be issued for a single violation involving multiple Class B retail dealers or third party
102 licensees, employees, or independent contractors.

103 (2) A license or permit granted by this section is subject to the penalties of probation,
104 monetary fines, suspension, and revocation, as set forth in this article, for violations committed
105 by the Class B retail dealer or third party licensee, their employees, or independent contractors.

106 (3) It is a violation for any Class B retail dealer or third party licensee, their employees, or
107 independent contractors to break the seal of a growler subject to the maximum penalties available
108 in this article.

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

§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 the residency, and that the
4 applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership,
5 limited liability company, or corporation, the application shall include the residence of the
6 members or officers. If a person, firm, partnership, limited partnership, limited liability company,
7 association, corporation, or trust applies for a license as a distributor, the person, or in the case
8 of a firm, partnership, limited partnership, limited liability company, association or trust, the
9 members, officers, trustees, or other persons in active control of the activities of the limited liability
10 company, association, or trust relating to the license, shall include the residency for these persons
11 on the application. All applicants and licensees shall include a manager on the applicant's license
12 application, or a licensee's renewal application, who shall meet all other requirements of licensure.
13 The applicant shall be a United States citizen or a naturalized citizen, pass a background
14 investigation, be at least 21 years of age, and meet other requirements, all as set forth in this
15 article and the rules promulgated thereunder, all in the interest of protecting public health and
16 safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall
17 notify the commissioner immediately of a change in managers. If the applicant is a trust or has a

18 trust as an owner, the trustees, or other persons in active control of the activities of the trust
19 relating to the license, shall provide a certification of trust as described in §44D-10-1013 of this
20 code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this
21 code and shall further state, under oath, the names, addresses, Social Security numbers, and
22 birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21
23 years of age or older. If a beneficiary is not 21 years of age, the certification of trust shall state
24 that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian
25 who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the
26 trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is
27 not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the
28 certification of trust and state under oath his or her name, address, Social Security number, and
29 birth date;

30 (2) The place of birth of the applicant, that he or she is a citizen of the United States and
31 of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant
32 is a corporation organized or authorized to do business under the laws of the state, the application
33 shall state when and where incorporated, the name and address of each officer, and that each
34 officer is a citizen of the United States and a person of good moral character. If the applicant is a
35 firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as
36 an owner, the application shall provide the place of birth of each member of the firm, association,
37 limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or
38 other persons in active control of the activities of the trust relating to the license and that each
39 member or trustee, beneficiary, or other persons in active control of the activities of the trust
40 relating to the license is a citizen of the United States, and if a naturalized citizen, when and where
41 naturalized, each of whom shall qualify and sign the application;

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

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

45 (5) That the premises or building in which the applicant proposes to do business conforms
46 to all applicable laws of health, fire, and zoning regulations and is a safe and proper place or
47 building; not within 200 feet of a school or church measured from front door to front door, along
48 the street or streets. This requirement does not apply to a Class B license or to a place occupied
49 by a beer licensee so long as it is continuously so occupied. The prohibition does not apply to a
50 college, university, or church that has notified the commissioner, in writing, that it has no objection
51 to the location of a proposed business in a place or building within 200 feet of the college,
52 university, or church;

53 (6) That the applicant is not incarcerated and has not, in the previous five years before
54 application, (A) been convicted of a felony, (B) been convicted of a crime involving fraud,
55 dishonesty or deceit, and/or (C) been convicted of a felony for violating alcohol-related distribution
56 laws;

57 (7) That the applicant is the only person in any manner pecuniarily interested in the
58 business to be licensed and that no other person is in any manner pecuniarily interested during
59 the continuance of the license; and

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

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

69 (c) The provisions and requirements of subsection (a) of this section are mandatory
70 prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner
71 shall refuse to issue the license. In addition to the information furnished in any application, the
72 commissioner may make any additional and independent investigation of each applicant,
73 manager, and of the place to be occupied as necessary or advisable and, for this reason, all
74 applications, with license fee and bond, shall be submitted with all true and correct information.
75 For the purpose of conducting the independent investigation, the commissioner may withhold the
76 granting or refusal to grant the license for a 30-day period or until the applicant has completed
77 the conditions set forth in this section. If it appears that the applicant and manager meet the
78 requirements in the code and the rules, including, but not limited to, has not been convicted of a
79 felony in the previous five years before application, has not been convicted of a crime involving
80 fraud, dishonesty or deceit in the previous five years before application, has not been convicted
81 of a felony for violating any alcohol-related distribution laws; having made no false statements or
82 material misrepresentations; involving no hidden ownership; and having no persons with an
83 undisclosed pecuniary interest contained in the application; and if there are no other omissions
84 or failures by the applicant to complete the application, as determined by the commissioner, the
85 commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or
86 nonintoxicating craft beer.

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

89 (1) That the applicant or manager has, within the previous five years before application,
90 (A) been convicted of a felony within the previous five years, (B) been convicted of a crime
91 involving fraud, dishonesty, or deceit, or (C) been convicted of a felony for violating any alcohol-
92 related distribution laws;

93 (2) That the place to be occupied by the applicant is not a suitable place; or is within 200
94 feet of any school or church measured from front door to front door along the street or streets.
95 This requirement does not apply to a Class B licensee or to a place now occupied by a beer
96 licensee so long as it is continuously so occupied. The prohibition does not apply to a college,
97 university, or church that has notified the commissioner, in writing, that it has no objection to the
98 location of any such place within 200 feet;

99 (3) That the manager, owner, employee, or person is in a contractual relationship to
100 provide goods or services to the applicant is an active employee of the commissioner; or

101 (4) That the license should not be issued for reason of conduct declared to be unlawful by
102 this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-3a. Off-premises sales not required to be bagged.

1 Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is
2 licensed for off-premises sales of alcoholic liquors.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-26. Sale of certain liquors prohibited.

1 (a) Upon the effective date of this section, the commissioner is hereby directed to divest
2 the state of all stocks of alcoholic liquors in the commissioner's possession manufactured in the
3 Russian Federation, or by any person or entity located therein, and to cease purchasing such
4 products during the time this section is in effect.

5 (b) The commissioner, at the direction of the Governor, is hereby authorized to auction to
6 the highest bidder or sell at a public event all stocks of alcohol liquors in the commissioner's
7 possession which were either manufactured in the Russian Federation or by a person or entity
8 located therein.

9 (c) The state's proceeds from the sale authorized by subsection (b) of this section shall be
10 paid to a licensed, recognized charitable organization or organizations engaged in assisting the
11 people of Ukraine.

12 (d) The provisions of this section shall expire three years from the effective date of the
13 section or until the Governor lifts the ban established in subsection (a) of this section.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3a. Liquor sampling.

1 (a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee
2 may conduct a liquor sampling event on a designated sampling day.

3 (b) At least five business days prior to the liquor sampling, the Class A retail licensee shall
4 submit a written proposal to the commissioner informing the Commissioner that the Class A
5 licensee will hold a liquor sampling event, including:

- 6 (1) The day of the event;
- 7 (2) The location of the event;
- 8 (3) The times for the event; and
- 9 (4) The specific brand and flavor of the West Virginia product to be sampled.

10 (c) Upon approval by the commissioner, a Class A retail licensee may serve a
11 complimentary liquor sample of the approved brand and flavor of the West Virginia product that
12 is purchased by the Class A retail licensee from the commissioner.

13 (d) The complimentary liquor samples on any sampling day shall not exceed:

14 (1) One separate and individual sample serving per customer verified to be 21 years of
15 age or older; and

16 (2) One ounce in total volume.

17 (e) Servers at the liquor sampling event shall:

18 (1) Be employees of the Class A retail licensee; and

19 (2) Be at least 21 years of age or older.

20 (f) All servers at the liquor sampling event shall verify the age of the customer sampling
21 liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling
22 event may not serve any person who is:

23 (1) Under the age of 21 years;

24 (2) Intoxicated.

25 (g) A liquor sampling event shall:

26 (1) Occur only inside the Class A retail licensee's licensed premises; and

27 (2) Cease on or before 9:00 p.m. on any approved sampling day.

28 (h) Any liquor bottle used for sampling must be from the inventory of the licensee, and
29 clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any
30 liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the
31 licensed premises immediately following the event.

32 (i) Violations of this section are subject to the civil and criminal penalties set forth in
33 sections twenty-four, twenty-five-a, twenty-six and twenty-seven of this article;

**§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party;
requirements; limitations; third party license fee; private liquor bottle delivery
permit; requirements, and curbside in-person and in-vehicle delivery by a retail
liquor outlet.**

1 (a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may
2 apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor
3 bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or
4 cans in the original container is permitted for off-premises consumption when completed by the
5 licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile
6 ordering application, or a web-based software program, authorized by the licensee's license.
7 There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license.
8 The order, sale, and delivery process shall meet the requirements of this section. The order, sale,
9 and delivery process is subject to the penalties of this article.

10 (b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor
11 delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a
12 licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for
13 off-premises consumption by a third party licensee when a retail liquor outlet sells to a person
14 purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering
15 application, or a web-based software program. The private liquor delivery license non-prorated,
16 nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and
17 vehicles.

18 (c) The private liquor delivery license application shall comply with licensure requirements
19 in this article and shall provide any information required by the commissioner.

20 (d) Sale Requirements. -

21 (1) The purchase of sealed liquor bottles or cans in the original container may accompany
22 the purchase of food and the completion of the sale may be accomplished by the delivery of food
23 and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

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

28 (3) "Food", for purposes of this section, means food that has been cooked, microwaved,
29 or that is pre-packaged food from the manufacturer.

30 (4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles
31 for each order: *Provided*, That the entire delivery order may not contain any combination of sealed
32 liquor bottles or cans in the original container, where the combination is more than 128 fluid
33 ounces of liquor total; and

34 (5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet,
35 as set forth in this article. A third party private liquor delivery licensee may only charge a

36 convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee
37 may not collect a percentage of the liquor delivery order, but may continue to collect a percentage
38 of the delivery order directly related to food. The convenience fee charged by the third-party
39 private liquor delivery licensee to the purchasing person shall be no greater than \$20 per delivery
40 order where a sealed liquor bottle or can in the original container is ordered by the purchasing
41 person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating
42 craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et*
43 *seq.* of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 *et seq.* of this
44 code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or
45 nonintoxicating beer, or nonintoxicating craft beer shall not exceed \$20.

46 (e) *Private Liquor Delivery Requirements.* —

47 (1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the
48 original container shall be 21 years of age or older and a retail liquor outlet and a third-party
49 private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle
50 information with the commissioner;

51 (2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery
52 persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor
53 outlet and a third-party private liquor delivery licensee shall submit certification of the training to
54 the commissioner;

55 (3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private
56 liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original
57 container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain
58 an electronic copy of his or her permit as proof of licensure;

59 (4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and
60 a sealed liquor bottle or can order in the original container in the market zone or contiguous market
61 zone where the licensed retail liquor outlet is located;

62 (5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food
63 and a sealed liquor bottle or can in the original container to addresses located in West Virginia,
64 The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all
65 sales and municipal taxes;

66 (6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food
67 and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-
68 1 *et seq.* of this code, and under this chapter;

69 (7) Deliveries of food and a sealed liquor bottle or can in the original container are only for
70 personal use, and not for resale; and

71 (8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and
72 leave food and a sealed liquor bottle or can in the original container at any address without
73 verifying a person's age and identification as required by this section.

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

75 (1) The delivery person shall only permit the person who placed the order through a
76 telephone order, a mobile ordering application, or web-based software to accept the food and a
77 sealed liquor bottle or can in the original container for delivery which is subject to verification upon
78 delivery with the delivery person's visual review and verification;

79 (2) Any mobile ordering application or web-based software used shall include the delivery
80 driver's name and vehicle information and delivery shall be subject to legal identification
81 verification;

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

85 (4) All records are subject to inspection by the commissioner. A retail liquor outlet or third
86 party private liquor delivery licensee shall retain records for three years, and shall not
87 unreasonably withhold the records from the commissioner's inspection; and

88 (5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor
89 bottle delivery permit required by subsection (g) of this section for each vehicle that may offer
90 delivery.

91 (g) *Private Liquor Bottle Delivery Permit.* —

92 (1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail
93 transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

94 (2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and
95 driver information, requested by the commissioner. Upon any change in vehicles or drivers, the
96 licensee shall update the driver and vehicle information with the commissioner within 10 days of
97 the change.

98 (3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery
99 permit shall meet the requirements of a transportation permit authorizing the permit holder to
100 transport liquor subject to the requirements of this chapter.

101 (h) *Enforcement.* —

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

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

109 (3) It is a violation for any licensee, its employees, or independent contractors to break
110 the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject
111 to the maximum penalties available in this chapter.

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

114 (i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in
115 the original container may provide for the sale and curbside in-person or in-vehicle pick-up of
116 sealed liquor bottles or cans in the original container, subject to verification that the purchasing
117 person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise
118 specified in this article.

119 (j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in
120 the original container may provide for the sale and delivery through a drive up or drive through
121 structure, approved by the commissioner, of sealed liquor bottles or cans in the original container,
122 subject to verification that the purchasing person is 21 years of age or older, and not visibly, or
123 noticeably intoxicated, and as otherwise specified in this article.

§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; 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, and meet other requirements, all as set forth in the code and the legislative rules, in order
15 for the manager to be able to meet and conduct any regulatory matters, including, but not limited

16 to, licensure or enforcement matters related to the applicant or licensee all in the interest of
17 protecting public health and safety. In order to maintain active licensure, any change by a licensee
18 in any manager listed on an application must be made immediately to the commissioner, in order
19 to verify that the new manager meets licensure requirements;

20 (3) That the applicant and manager have not (A) been convicted in this state or any other
21 state of any felony in the five years preceding the date of application or (B) other crime involving
22 fraud, dishonesty, or deceit in the five years preceding the date of application, or (C) been
23 convicted of any felony in this or any other state court or any federal court for a violation of alcohol-
24 related distribution laws, and if the applicant is other than an individual, that none of its executive
25 officers, other principal officers, partners, or members, or any person owning, directly or indirectly,
26 at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has
27 been convicted; and

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

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

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

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

44 (1) The applicant has been, within the five years preceding the date of application; (A)
45 convicted in this state of any felony or (B) convicted of a crime involving fraud, dishonesty, or
46 deceit or (C) convicted of any felony in this or any other state court or any federal court for a
47 violation of alcohol-related distribution laws; or

48 (2) Any executive officer or other principal officer, partner, or member of the applicant, or
49 any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership,
50 or other interests in the applicant, has been, within the five yeas preceding the date of application;
51 (A) convicted in this state of any felony or (B) convicted of a crime involving fraud, dishonesty, or
52 deceit or (C) convicted of any felony in this or any other state court or any federal court for a
53 violation of alcohol-related distribution laws.

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

**§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from
state; transportation and storage; method of payment.**

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to
2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according
3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor
4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to §60-
5 4-3 of this code.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General
7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to
8 the average for the past three years. The net revenue derived from the sale of alcoholic liquors

9 shall be deposited into the General Revenue Fund in the manner provided in §60-3-17 of this
10 code.

11 (c) Notwithstanding any provision of this code to the contrary, the commissioner shall
12 specify the maximum wholesale markup percentage which may be applied to the prices paid by
13 the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor,
14 other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other
15 than wine, for resale in this state only from the commissioner, and the provisions of §60-6-12 and
16 §60-6-13 of this code shall not apply to the transportation of the liquor: *Provided*, That a retail
17 licensee shall purchase wine from a wine distributor who is duly licensed under §60-8-1 *et seq.*
18 of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state
19 at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the
20 commissioner, in his or her discretion, may upon written request permit a retail licensee to store
21 liquor at a site other than the retail outlet or outlets.

22 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic
23 funds transfer which shall be initiated by the commissioner on the business day following the retail
24 licensees order or by money order, certified check, or cashier's check which shall be received by
25 the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if
26 a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety
27 acceptable to the commissioner from a financial institution acceptable to the commissioner
28 guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks
29 in an amount up to the amount of the letter of credit.

30 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-
31 7-1 *et seq.* of this code at less than 115 percent of the retail licensee's cost as defined in §47-
32 11A-6 of this code.

33 (2) A retail licensee may not sell liquor to the general public at less than 110 percent of
34 the retail licensee's cost as defined in §47-11A-6 of this code.

ARTICLE 4. LICENSES.

§60-4-22. Wholesale representatives' licenses.

1 (a) A person, firm or corporation may not be or act or serve as an agent, broker or
2 salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the
3 commission or to any distributor licensed pursuant to article eight of this chapter without first
4 obtaining a license so to do in accordance with the provisions of this section. Only salaried
5 employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be
6 licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic
7 liquor to the commission or any distributor on a fee or commission basis. The commission shall
8 be the licensing authority and may grant to persons of good moral character the license herein
9 provided and may refuse to grant such license to any person (1) convicted of a felony, within five
10 years prior to his or her application, (2) convicted of a crime involving fraud, dishonesty, or deceit,
11 within the previous five years before application, or (3) convicted of a felony violation of a state or
12 federal liquor law within the previous five years before application; refuse to grant, suspend or
13 revoke licenses. Licenses shall be on an annual basis for the period from July 1, until June 30
14 next following. New and renewal licenses shall be granted only upon verified application to the
15 commission presented on forms provided by the commission. Any person representing more than
16 one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and
17 shall obtain a separate license for each such representation. The annual license fee shall be
18 \$100. The fee for any license granted for the remainder of any license year between January 1,
19 and June 30 of the same calendar year shall be \$50.

20 (b) In addition to all other information which the commission may require to be supplied
21 on the license application forms, each applicant shall be required to state his or her name and his
22 or her residence address and the name and business address of the producer, manufacturer or
23 distributor he or she represents; the name and address of each additional producer, manufacturer
24 or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor

25 sales, if any, made by him or her to the commission or to any distributor licensed pursuant to
26 article eight of this chapter during the fiscal year preceding the license year for which he or she is
27 seeking a license; the monetary total of the gross income received by him or her on such sales,
28 if any, during such fiscal year; whether he or she has, during such fiscal year, made or given,
29 voluntarily or on request, any gift, contribution of money or property to any member or employee
30 of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for
31 the benefit of any political party committee or campaign fund; and his or her relationship, if any,
32 by blood or marriage, to any member of the commission or to any elected or appointive state
33 official, county official or municipal official. All such applications shall be verified by oath of the
34 applicant and shall be prepared and filed in duplicate. All such applications and a current list of
35 all licensees hereunder shall be matters of public record and shall be available to public inspection
36 at the commission's offices at the State Capitol. Every licensee who ceases to be an agent, broker
37 or salesman, as herein contemplated, shall so advise the commission in writing and such person's
38 name shall be immediately removed from the license list and his or her license shall be canceled
39 and terminated.

40 (c) All persons licensed under this section shall be authorized representatives of the
41 wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers, or processors of
42 alcoholic liquor they represent. A licensed person may not share, divide, or split his or her salary
43 with any person other than his or her wife or some legal dependent, nor may he or she make any
44 contribution to any political party campaign fund in this state.

45 (d) All licensees shall be subject to all other provisions of this chapter and to the lawful
46 rules promulgated by the commission. Licenses may be refused, suspended, or revoked by the
47 commission for cause, including any of the applicable grounds of revocation specified in section
48 nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to
49 the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

50 (e) Any person, firm or corporation violating any provision of this section, including
51 knowingly making of any false statement in a verified application for a license shall be guilty of a
52 misdemeanor offense and shall, upon conviction thereof, be fined not exceeding \$1,000 or
53 imprisoned in jail not exceeding 12 months, or be subject to both such fine and imprisonment in
54 the discretion of the court.

§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.

1 (a) For purposes of this section:

2 (1) "Exotic entertainment" means live nude dancing, nude service personnel or live nude
3 entertainment, and "nude" means any state of undress in which male or female genitalia or female
4 breasts are exposed.

5 (2) "Places set apart for traditional family-oriented naturism" means family nudist parks,
6 clubs and resorts chartered by the American association for nude recreation or the naturist
7 society, including all of their appurtenant business components, and also including places
8 temporarily in use for traditional family-oriented naturist activities.

9 (b) No person may operate any commercial facility where exotic entertainment is permitted
10 or offered unless such person is granted a license by the commissioner to operate a facility where
11 exotic entertainment may be offered. The provisions of this subsection apply whether or not
12 alcoholic liquor, wine or nonalcoholic beer is legally kept, served, sold, or dispensed in a facility,
13 or purchased for use in a facility, or permitted to be brought by others into a facility and whether
14 or not such person holds any other license or permit issued pursuant to chapter 60 of this code.

15 (c) A licensee is subject to all the regulatory provisions of §60-7-1 *et seq.* of this code,
16 whether or not the licensee is otherwise a private club. The commissioner shall have all the

17 powers and authorization granted under §60-7-1 *et seq.* of this code to regulate, restrict, and
18 sanction a licensee under this section. No licensee may purchase, keep, sell, serve, dispense, or
19 purchase for use in a licensed facility, or permit others to bring into the facility, any alcoholic liquor,
20 wine, or nonintoxicating beer or nonintoxicating craft beer without having the appropriate license.
21 No licensee may operate a private club without being licensed.

22 (d) No person or licensee may allow a person under the age of 18 years to perform as an
23 exotic entertainer. No person under the age of 21 years, other than a performing exotic
24 entertainer, may be allowed to be in a commercial facility on any day on which any exotic
25 entertainment is offered therein. No licensee may hold special nonalcoholic entertainment events
26 for persons under age 21 pursuant to the provisions of §60-7-8 of this code in the licensed facility.

27 (e) A person to whom a license is issued or renewed under the provisions of this section
28 shall pay annually to the commissioner a license fee of \$3,000. A municipal corporation wherein
29 any such licensee is located shall issue a municipal license to any person to whom the
30 commissioner has issued a license and may impose a license fee not in excess of the state license
31 fee.

32 (f) A person shall not sell, assign, or otherwise transfer a license without the prior written
33 approval of the commissioner. For purposes of this section, the merger of a licensee or the sale
34 of more than 50 percent of the outstanding stock of or partnership interests in the licensee shall
35 be deemed to be a sale, assignment, or transfer of a license under this section. A license shall
36 not be transferred to another location, except within the county of original licensure. A transferee
37 of a licensed facility may apply for reissuance of the transferor's license if the transferee applicant
38 otherwise qualifies for a license. The commissioner is authorized to propose the promulgation of
39 a legislative rule in accordance with the provisions of chapter 29A of this code, to implement the
40 provisions of this subsection.

41 (g) Any person who violates any provision of this section, or principal of a firm or
42 corporation which violates any provision of this section, or licensee, agent, employee, or member
43 of any licensee who violates any provision of this section, or who violates any of the provisions of
44 §60-7-12 of this code, on the premises of a licensed facility, is guilty of a misdemeanor and, upon
45 conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000, or imprisoned for a
46 period not to exceed one year, or both so fined and imprisoned.

47 (h) The provisions of this section do not apply to places set apart for traditional family-
48 oriented naturist activities.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-24. Requirement for posting informational sign.

1 Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine,
2 hard cider, nonintoxicating beer or nonintoxicating craft beer for either on-premises or off-
3 premises consumption, shall post in an open and prominent place within the establishment, a
4 blood-alcohol chart containing information showing the estimated percent of alcohol in the blood
5 by the number of drinks in relation to body weight and time of consumption, as provided in the
6 chart available on the commissioner's website. Enforcement of the posting provisions of this
7 section shall be carried out by the commissioner for all licensees required to post the notice.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses.

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

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

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

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

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

9 (5) "Private club" means any corporation or unincorporated association which either:

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

18 (B) Is a nonprofit social club, which is operated exclusively for the benefit of its members,
19 which pays no part of its income to its shareholders or individual members, which owns or leases
20 a building or other premises to which club are admitted only duly-elected or approved dues-paying
21 members in good standing of the corporation or association and their guests while in the company
22 of a member and to which club the general public is not admitted, and which club maintains in the
23 building or on the premises a suitable kitchen and dining facility with related equipment for serving
24 food to members and their guests;

25 (C) Is organized and operated for legitimate purposes which has at least 100 duly- elected
26 or approved dues-paying members in good standing, which owns or leases a building or other
27 premises, including any vessel licensed or approved by any federal agency to carry or
28 accommodate passengers on navigable waters of this state, to which club are admitted only duly-
29 elected or approved dues-paying members in good standing of the corporation or association and
30 their guests while in the company of a member and to which club the general public is not
31 admitted, and which club maintains in the building or on the premises a suitable kitchen and dining

32 facility with related equipment and employs a sufficient number of persons for serving meals to
33 members and their guests; or

34 (D) Is organized for legitimate purposes and owns or leases a building or other delimited
35 premises in any state, county, or municipal park, or at any airport, in which building or premises
36 a club has been established, to which club are admitted only duly-elected and approved dues-
37 paying members in good standing and their guests while in the company of a member and to
38 which club the general public is not admitted, and which maintains in connection with the club a
39 suitable kitchen and dining facility and related equipment and employs a sufficient number of
40 persons for serving meals in the club to the members and their guests.

41 (6) "Private bakery" means an applicant for a private club or licensed private club license
42 that has a primary function of operating a food preparation business that produces baked goods,
43 including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and
44 other baked goods. The applicant or licensee desires to sell baked goods infused with liquor,
45 wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle,
46 or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the
47 baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing
48 alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or
49 nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. This
50 applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-
51 premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this
52 subdivision which:

53 (i) Has at least 50 members;

54 (ii) Operates a kitchen that produces baked goods, as specified in this subdivision,
55 including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and
56 cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a
57 refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans,

58 kitchen utensils, and other food consumption apparatus as determined by the commissioner; and
59 (V) food fit for human consumption available to be served during all hours of operation on the
60 licensed premises;

61 (iii) Maintains, at any one time, \$750 of food inventory capable of being prepared in the
62 private bakery's kitchen. In calculating the food inventory, the commissioner shall include
63 television dinners, bags of chips or similar products, microwavable food or meals, frozen meals,
64 pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or
65 canned prepared foods;

66 (iv) Uses an age verification system approved by the commissioner for the purpose of
67 verifying that persons under the age of 21 who are in the private bakery are not sold items
68 containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine, and a
69 person under 21 years of age may enter the shop and purchase other items not containing
70 alcoholic liquors; and

71 (v) Meet and be subject to all other private club requirements.

72 (7) "Private cigar shop" means an applicant for a private club or licensed private club
73 licensee that has a primary function of operating a cigar shop for sales of premium cigars for
74 consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar
75 consumption is permitted with a limited food menu, which may be met by utilizing a private caterer,
76 for members and guests while the private club applicant or licensee is selling and serving liquor,
77 wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further,
78 the applicant or licensee shall meet the criteria set forth in this subdivision which:

79 (A) Has at least 50 members;

80 (B) Operates a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot
81 plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot
82 refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for
83 alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined

84 by the commissioner; and (v) food fit for human consumption available to be served during all
85 hours of operation on the licensed premises;

86 (C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the
87 private club bar's kitchen or has on hand at least \$150 in food provided by a private caterer. In
88 calculating the food inventory, the commissioner shall include television dinners, bags of chips or
89 similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned
90 prepared foods;

91 (D) Uses an age verification system approved by the commissioner for the purpose of
92 verifying that persons under the age of 21 who are in the private club bar are accompanied by a
93 parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent
94 or legal guardian, that person may not be admitted as a guest; and

95 (E) Meets and is subject to all other private club requirements.

96 (8) "Private caterer" means a licensed private club restaurant, private hotel, or private
97 resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic
98 liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase
99 wine sold or served at a catering event from a wine distributor. A private caterer shall purchase
100 nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a
101 licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet
102 authorized to sell in the market zone, where the catering event is held. The private caterer or the
103 persons or entity holding the catering event shall:

104 (A) Have at least 10 members and guests attending the catering event;

105 (B) Have obtained an open container waiver or have otherwise been approved by a
106 municipality or county in which the event is being held;

107 (C) Operate a private club restaurant on a daily operating basis;

108 (D) Only use its employees, independent contractors, or volunteers to sell and serve
109 alcoholic liquors who have received certified training in verifying the legal identification, the age
110 of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

111 (E) Provide to the commissioner, at least seven days before the event is to take place:

112 (i) The name and business address of the unlicensed private venue where the private
113 caterer is to provide food and alcohol for a catering event;

114 (ii) The name of the owner or operator of the unlicensed private venue;

115 (iii) A copy of the contract or contracts between the private caterer, the person contracting
116 with the caterer, and the unlicensed private venue;

117 (iv) A floorplan of the unlicensed private venue to comprise the private catering premises,
118 which shall only include spaces in buildings or rooms of an unlicensed private venue where the
119 private caterer has control of the space for a set time period where the space safely accounts for
120 the ingress and egress of the stated members and guests who will be attending the private
121 catering event at the catering premises. The unlicensed private venue's floorplan during the set
122 time period as stated in the contract shall comprise the private caterer's licensed premises, which
123 is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating
124 beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises:
125 *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure, (II) have
126 other facilities to prepare and serve food and alcohol, (III) have adequate restrooms and sufficient
127 building facilities for the number of members and guests expected to attend the private catering
128 event, and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

129 (F) Not hold more than 15 private catering events per calendar year. Upon reaching the
130 16th event, the unlicensed venue shall obtain its own private club license;

131 (G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed
132 venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan
133 extension for authorization to permit alcohol and food at an outdoor event;

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

135 (I) Use an age verification system approved by the commissioner.

136 (9) "Private club bar" means an applicant for a private club or licensed private club licensee
137 that has a primary function for the use of the licensed premises as a bar for the sale and
138 consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when
139 licensed for those sales, while providing a limited food menu for members and guests, and
140 meeting the criteria set forth in this subdivision which:

141 (A) Has at least 100 members;

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

148 (C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the
149 private club bar's kitchen. In calculating the food inventory, the commissioner shall include
150 television dinners, bags of chips or similar products, microwavable food or meals, frozen meals,
151 prepackaged foods, or canned prepared foods;

152 (D) Uses an age verification system approved by the commissioner for the purpose of
153 verifying that persons under the age of 18 who are in the private club bar are accompanied by a
154 parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent
155 or legal guardian that person may not be admitted as a guest; and

156 (E) Meets and is subject to all other private club requirements.

157 (10) "Private food truck" means an applicant for a private club, licensed private club
158 licensee, or licensed private manufacturer's club licensee that has a primary function of operating
159 a food preparation business using an industrial truck, van, or trailer to prepare food and meals for

160 sale at various locations within the state while utilizing a propane or electric generator powered
161 kitchen. The private food truck applicant shall obtain county or municipal approval to operate for
162 food and liquor, wine, and nonintoxicating beer or nonintoxicating craft beer sales and service,
163 while providing a food menu for members and guests. The private food truck applicant shall meet
164 the criteria set forth in this subdivision which:

165 (A) Has at least 10 members;

166 (B) Operates with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or
167 microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator
168 or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold
169 storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as
170 determined by the commissioner;

171 (C) Maintains, at any one time, \$500 of food inventory that is fit for human consumption
172 and capable of being prepared and served from the private food truck's kitchen during all hours
173 of operation;

174 (D) Shall be sponsored, endorsed, or approved by the governing body or its designee of
175 the county or municipality in which the private food truck is to be located and operate, and further
176 each location shall have a bounded and defined area and set hours for private food truck
177 operations, sales, and consumption of alcohol that are not greater than a private club's hours of
178 operation;

179 (E) Provides the commissioner with a list of all locations, including a main business
180 location, where the private food truck operates, and is approved for sales pursuant to subsection
181 (D) of this section, and immediately update the commissioner when new locations are approved
182 by a county or municipality;

183 (F) Requires all nonintoxicating beer and nonintoxicating craft beer sold, furnished,
184 tendered, or served pursuant to the license created by this section to be purchased from the

185 licensed distributor where the private food truck has its home location or from a resident brewer
186 acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

187 (G) Requires wine or hard cider sold, furnished, tendered, or served pursuant to the
188 license created by this section to be purchased from a licensed distributor, winery, or farm winery
189 in accordance with §60-8-1 *et seq.* of this code.

190 (H) Requires liquor sold, furnished, tendered, or served pursuant to the license created by
191 this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous
192 market zone where the private food truck has its main business location, all in accordance with
193 §60-3A-1 *et seq.* of this code.

194 (I) A licensee authorized by this section shall utilize bona fide employees to sell, furnish,
195 tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

196 (J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-
197 distillery may obtain a private food truck license;

198 (K) Licensed representatives of a brewer, resident brewer, beer distributor, wine
199 distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor
200 broker representatives may attend a location where a private food truck is located and discuss
201 their respective products but may not engage in the selling, furnishing, tendering, or serving of
202 any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

203 (L) Uses an age verification system approved by the commissioner for the purpose of
204 verifying that persons under the age of 21 who are in the private club bar are not permitted to be
205 served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may
206 be permitted to purchase food or other items;

207 (M) Obtains all permits required by §60-6-12 of this code; and

208 (N) Meets and is subject to all other applicable private club requirements.

209 (11) "Private club restaurant" means an applicant for a private club or licensed private club
210 licensee that has a primary function of using the licensed premises as a restaurant for serving

211 freshly prepared meals and dining in the restaurant area. The private club restaurant may have a
212 bar area separate from or commingled with the restaurant, seating requirements for members
213 and guests shall be met by the restaurant area. The applicant for a private club restaurant license
214 which:

215 (A) Has at least 100 members;

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

221 (C) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared
222 in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner
223 may not include television dinners, bags of chips or similar products, microwavable meals, frozen
224 meals, pre-packaged foods, or canned prepared foods;

225 (D) Uses an age verification system approved by the commissioner for the purpose of
226 verifying that persons under 18 years of age who are in the bar area of a private club restaurant
227 are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar
228 area who is under the age of 18 years and who is not accompanied by a parent or legal guardian,
229 but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in
230 the restaurant area of a private club restaurant:

231 (E) May uncork and serve members and guests up to two bottles of wine that a member
232 purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when
233 licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use
234 and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no
235 event may a member or a group of members and guests exceed two sealed bottles or containers
236 of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant

237 and for personal consumption by the member and guests. A member or guest may cork and
238 reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative
239 rules for carrying unconsumed wine off the licensed premises;

240 (F) Has at least two restrooms for members and their guests: *Provided*, That this
241 requirement may be waived by the local health department upon supplying a written waiver of the
242 requirement to the commissioner: *Provided, however*, That the requirement may also be waived
243 for a historic building by written waiver supplied to commissioner of the requirement from the
244 historic association or district with jurisdiction over a historic building: *Provided, further* That in no
245 event may a private club restaurant have less than one restroom; and

246 (G) Meets and is subject to all other private club requirements.

247 (12) "Private manufacturer club" means an applicant for a private club or licensed private
248 club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm
249 winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer or
250 nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for
251 on-premises consumption at the licensee's licensed premises and in the area or areas denoted
252 on the licensee's floorplan, and which:

253 (A) Has at least 100 members;

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

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

260 (D) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in
261 the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner

262 may not include television dinners, bags of chips or similar products, microwavable meals, frozen
263 meals, pre-packaged foods, or canned prepared foods;

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

268 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
269 buildings and structures on the private manufacturer club's floorplan that would comprise the
270 licensed premises, which would be authorized for the lawful sale, service, and consumption of
271 alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the
272 licensed premises, whether these activities were conducted in a building or structure or outdoors
273 while on the private manufacturer club's licensed premises, and as noted on the private
274 manufacturer club's floorplan;

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

278 (H) Uses an age verification system approved by the commissioner; and

279 (I) Meets and is subject to all other private club requirements.

280 (13) "Private fair and festival" means an applicant for a private club or a licensed private
281 club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set
282 forth in this subdivision which:

283 (A) Has at least 100 members;

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

287 (C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared
288 food or meals to serve its stated members and guests who will be attending the temporary festival,
289 fair, or other event, and further shall provide any documentation or agreements to the
290 commissioner prior to approval;

291 (D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve
292 alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

293 (E) Provides adequate restroom facilities, whether permanent or portable, to serve the
294 stated members and guests who will be attending the festival, fair, or other event;

295 (F) Provides a floorplan for the proposed premises with a defined and bounded area to
296 safely account for the ingress and egress of stated members and guests who will be attending
297 the festival, fair, or other event;

298 (G) Uses an age verification system approved by the commissioner; and

299 (H) Meets and is subject to all other private club requirements.

300 (14) "Private hotel" means an applicant for a private club or licensed private club licensee
301 meeting the criteria set forth in this subsection which:

302 (A) Has at least 2,000 members;

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

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

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

311 (E) Owns or leases, controls, operates, and uses acreage amounting to more than one
312 acre but fewer than three acres, which are contiguous acres of bounded or fenced real property

313 which would be listed on the licensee's floorplan and would be used for hotel and conferences
314 and large contracted-for group-type events such as weddings, reunions, conferences, meetings,
315 and sporting or recreational events;

316 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
317 buildings and structures on the private hotel's floorplan which would comprise the licensed
318 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic
319 liquors throughout the licensed premises whether these activities were conducted in a building or
320 structure or outdoors while on the private hotel's licensed premises and as noted on the private
321 hotel's floorplan;

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

324 (H) Uses an age verification system approved by the commissioner;

325 (I) Meets and is subject to all other private club requirements; and

326 (J) May provide members and guests who are verified by proper form of identification to
327 be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in
328 their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of
329 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider,
330 and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any
331 combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating
332 beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not
333 exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml,
334 with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of
335 canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on
336 the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating
337 beer or nonintoxicating craft beer available for sale shall be purchased from the licensed
338 distributor in the area where licensed. All wine or hard cider available for sale shall be purchased

339 from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be
340 purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The
341 mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

342 (15) "Private resort hotel" means an applicant for a private club or licensed private club
343 licensee which:

344 (A) Has at least 5,000 members;

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

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

350 (D) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared
351 in the private resort hotel's full kitchen. In calculating the food inventory the commissioner may
352 not include microwavable, frozen, or canned foods;

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

357 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
358 buildings and structures on the private resort hotel's floorplan comprising the licensed premises,
359 would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout
360 the licensed premises whether these activities were conducted in a building or structure or
361 outdoors while on the private resort hotel's licensed premises;

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

364 (H) Uses an age verification system approved by the commissioner;

365 (I) Meets and is subject to all other private club requirements;

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

370 (K) May provide members and guests who are verified by proper form of identification to
371 be 21 years of age or older to have access via key or key card to an in-room mini-bar in their
372 rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2
373 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and
374 liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination
375 of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or
376 nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not
377 exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100
378 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half
379 liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups,
380 fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer,
381 wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be
382 purchased from the licensed distributor in the area where licensed. All wine or hard cider available
383 for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor
384 available for sale shall be purchased from the licensed retail liquor outlet in the market zone of
385 the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit
386 the member and guest.

387 (16) "Private golf club" means an applicant for a private club or licensed private club
388 licensee meeting the criteria set forth in this subdivision which:

389 (A) Has at least 100 members;

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

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

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

398 (E) Lists the entire property from paragraph D of this subsection and all adjoining buildings
399 and structures on the private golf club's floorplan comprising the licensed premises, would be
400 authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the
401 licensed premises whether these activities were conducted in a building or structure or outdoors
402 while on the private golf club's licensed premises;

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

405 (G) Uses an age verification system approved by the commissioner; and

406 (H) Meets and is subject to all other private club requirements.

407 (17) "Private nine-hole golf course" means an applicant for a private club or licensed
408 private club licensee meeting the criteria set forth in this subdivision which:

409 (A) Has at least 50 members;

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

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

414 (D) Owns or leases, controls, operates, and uses acreage amounting to at least 30
415 contiguous acres of bounded or fenced real property which would be listed on the private nine-

416 hole golf course's floorplan and could be used for golfing events and large contracted for group-
417 type events such as weddings, reunions, conferences, meetings, and sporting or recreational
418 events;

419 (E) Lists the entire property from paragraph (D) of this subdivision and all adjoining
420 buildings and structures on the private nine-hole golf course's floorplan comprising the licensed
421 premises, would be authorized for the lawful sales, service, and consumption of alcoholic liquors
422 throughout the licensed premises whether these activities were conducted in a building or
423 structure or outdoors while on the private nine-hole golf course's licensed premises;

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

426 (G) Uses an age verification system approved by the commissioner; and

427 (H) Meets and is subject to all other private club requirements.

428 (18) "Private tennis club" means an applicant for a private club or licensed private club
429 licensee which:

430 (A) Has at least 100 members;

431 (B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor,
432 and a clubhouse or similar facility;

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

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

439 (E) Lists the entire property from paragraph (D) of this subdivision and all adjoining
440 buildings and structures on the private tennis club's floorplan comprising the licensed premises,
441 would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout

442 the licensed premises whether these activities were conducted in a building or structure or
443 outdoors while on the private tennis club's licensed premises;

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

447 (G) Meets and is subject to all other private club requirements; and

448 (H) Uses an age verification system approved by the commissioner.

449 (19) "Private college sports stadium" means an applicant for a private club or licensed
450 private club licensee that operates a college or university stadium or coliseum for Division I, II, or
451 III and involves a college public or private or university that is a member of the National Collegiate
452 Athletic Association, or its successor, and uses the facility for football, basketball, baseball,
453 soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings,
454 or other special events and does not maintain daily or regular operating hours as a bar or
455 restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-
456 collegiate sporting events. This license may be issued in the name of the National Collegiate
457 Athletic Association Division I, II, or III college or university or the name of the primary food and
458 beverage vendor under contract with that college or university. All alcohol sales shall take place
459 within the confines of the college stadium: *Provided*, That any outside area approved for alcohol
460 sales shall be surrounded by a fence or other barrier prohibiting entry except upon the college or
461 university's express permission, and under the conditions and restrictions established by the
462 college or university, so that the alcohol sales area is closed in order to prevent entry and access
463 by the general public. Further the applicant shall:

464 (A) Have at least 100 members;

465 (B) Maintain an open-air or closed-air stadium or coliseum venue primarily used for
466 sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports,

467 and also weddings, reunions, conferences, meetings, or other events where parties shall reserve
468 the college stadium venue in advance of the event;

469 (C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or
470 greater than a private club restaurant, as determined by the commissioner, on the licensed
471 premises and capable of serving freshly prepared food or meals to its stated members, guests,
472 and patrons who will be attending the event at the private college sports stadium;

473 (D) Own or lease, control, operate, and use acreage amounting to at least two contiguous
474 acres of bounded or fenced real property, as determined by the commissioner, which would be
475 listed on the private college stadium's floorplan and could be used for contracted-for temporary
476 non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other
477 events;

478 (E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings
479 and structures on the private college sports stadium's floorplan which would comprise the licensed
480 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic
481 liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises
482 whether these activities were conducted in a building or structure or outdoors while on the private
483 college sports stadium's licensed premises and as noted on the private college sports stadium's
484 floorplan;

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

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

488 (H) Use an age verification system approved by the commissioner.

489 (20) "Private professional sports stadium" means an applicant for a private club or licensed
490 private club licensee that is only open for professional sporting events when the events are
491 affiliated with or sponsored by a professional sporting association, reserved weddings, reunions,
492 conferences, meetings, or other special events and does not maintain daily or regular operating

493 hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or
494 hosting non-professional sporting events, and further the applicant shall:

495 (A) Have at least 1,000 members;

496 (B) Maintain an open-air or closed-air stadium venue primarily used for sporting events,
497 such as football, baseball, soccer, auto racing, or other professional sports, and also weddings,
498 reunions, conferences, meetings, or other events where parties reserve the stadium venue in
499 advance of the event;

500 (C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner,
501 on the licensed premises and capable of serving freshly prepared food or meals to serve its stated
502 members, guests, and patrons who will be attending the event at the private professional sports
503 stadium;

504 (D) Own or lease, control, operate, and use acreage amounting to at least three
505 contiguous acres of bounded or fenced real property, as determined by the commissioner, which
506 would be listed on the professional sports stadium's floorplan and could be used for contracted-
507 for professional sporting events, group-type weddings, reunions, conferences, meetings, or other
508 events;

509 (E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings
510 and structures on the private professional sports stadium's floorplan comprising the licensed
511 premises, and be authorized for the lawful sales, service, and consumption of alcoholic liquors
512 throughout the licensed premises whether these activities were conducted in a building or
513 structure or outdoors while on the private professional sports stadium's licensed premises;

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

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

517 (H) Use an age verification system approved by the commissioner.

518 (21) "Private farmers market" means an applicant for a private club or licensed private club
519 licensee that operates as an association of bars, restaurants, retailers who sell West Virginia-
520 made products among other products, and other stores who open primarily during daytime hours
521 of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the
522 sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur
523 for on-premises consumption, such as reserved weddings, reserved dinners, pairing events,
524 tasting events, reunions, conferences, meetings, or other special events and does not maintain
525 daily or regular operating hours as a bar or restaurant, and all businesses that are members of
526 the association have agreed in writing to be liable and responsible for all sales, service, furnishing,
527 tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft
528 beer occurring on the entire licensed premises of the private farmer's market, including indoor
529 and outdoor bounded areas, and further the applicant shall:

530 (A) Have at least 100 members;

531 (B) Have one or more members operating a private club restaurant and full kitchen with
532 ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and
533 freezer, and other kitchen utensils and apparatus as determined by the commissioner on the
534 licensed premises and serves freshly prepared food at least 15 hours per week;

535 (C) Have one or more members operating who maintain, at any one time, \$1,000 of fresh
536 food inventory capable of being prepared for events conducted at the private farmers market in
537 the private club restaurant's full kitchen, and in calculating the food inventory the commissioner
538 may not include television dinners, bags of chips or similar products, microwavable meals, frozen
539 meals, pre-packaged foods, or canned prepared foods;

540 (D) Have an association that owns or leases, controls, operates, and uses acreage
541 amounting to more than one acre, which is contiguous acreage of bounded or fenced real property
542 which would be listed on the licensee's floorplan and would be used for large contracted-for

543 reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences,
544 meetings, or other special events;

545 (E) Have an association that lists in the application for licensure the entire property and all
546 adjoining buildings and structures on the private farmers market's floorplan which would comprise
547 the licensed premises, which would be authorized for the lawful sales, service, and consumption
548 of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed
549 premises whether these activities were conducted in a building or structure or outdoors while on
550 the private farmers market's licensed premises and as noted on the private farmers market's
551 floorplan;

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

554 (G) Have at least two separate and unrelated vendors applying for the license and
555 certifying that all vendors in the association have agreed to the liability responsibility associated
556 with a private farmers market license;

557 (H) Only use its employees, independent contractors, or volunteers to purchase, sell,
558 furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

559 (I) Provide adequate restroom facilities, whether permanent or portable, to serve the
560 stated members and guests who will be attending the private farmers market;

561 (J) Provide a copy of a written agreement between all the vendors of the association that
562 is executed by all vendors stating that each vendor is jointly and severally liable for any violations
563 of this chapter committed during the event;

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

567 (L) Use an age verification system approved by the commissioner; and

568 (M) Meet and be subject to all other private club requirements.

569 (22) "Private wedding venue or barn" means an applicant for a private club or licensed
570 private club licensee that is only open for reserved weddings, reunions, conferences, meetings,
571 or other events and does not maintain daily or regular operating hours, and which:

572 (A) Has at least 25 members;

573 (B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions,
574 conferences, meetings, or other events where parties reserve or contract for the venue, facility,
575 barn, or pavilion in advance of the event;

576 (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner,
577 on the licensed premises that is capable of serving freshly prepared food, or may engage a food
578 caterer to provide adequate freshly prepared food or meals to serve its stated members, guests,
579 and patrons who will be attending the event at the private wedding venue or barn. The applicant
580 or licensee shall provide written documentation including a list of food caterers or written
581 agreements regarding any food catering operations to the commissioner prior to approval of a
582 food catering event;

583 (D) Owns or leases, controls, operates, and uses acreage amounting to at least two
584 contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that,
585 the property is not less than two acres and is remotely located, subject to the commissioner's
586 approval. The bounded or fenced real property may be listed on the private wedding venue's
587 floorplan and may be used for large events such as weddings, reunions, conferences, meetings,
588 or other events;

589 (E) Lists the entire property from paragraph (D) of this subdivision and all adjoining
590 buildings and structures on the private wedding venue or barn's floorplan that would comprise the
591 licensed premises, and would be authorized for the lawful sales, service, and consumption of
592 alcoholic liquors throughout the licensed premises whether these activities were conducted in a
593 building or structure or outdoors while on the private wedding venue or barn's licensed premises;

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

596 (G) Meets and is subject to all other private club requirements; and

597 (H) Uses an age verification system approved by the commissioner.

598 (23) "Private multi-sport complex" means an applicant for a private club or licensed private
599 club licensee that is open for multiple sports events to be played at the complex facilities, reserved
600 weddings, concerts, reunions, conferences, meetings, or other special events, and which:

601 (A) Has at least 100 members;

602 (B) Maintains an open-air multi-sport complex primarily for use for sporting events, such
603 as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings,
604 concerts, reunions, conferences, meetings, or other events where parties reserve the parts of the
605 sports complex in advance of the sporting or other event;

606 (C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as
607 determined by the commissioner, on the licensed premises and capable of serving freshly
608 prepared food, or meals to serve its stated members, guests, and patrons who will be attending
609 the event at the private multi-sport complex. A licensee may contract with temporary food vendors
610 or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport
611 complex not readily accessible by the main facility;

612 (D) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared
613 in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner
614 may not include television dinners, bags of chips or similar products, microwavable meals, frozen
615 meals, prepackaged foods, or canned prepared foods;

616 (E) Owns or leases, controls, operates, and uses acreage amounting to at least 50
617 contiguous acres of bounded or fenced real property, as determined by the commissioner, which
618 would be listed on the private multi-sport complex's floorplan and could be used for contracted-

619 for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other
620 events;

621 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
622 buildings and structures on the private multi-sport complex's floorplan which would comprise the
623 licensed premises, which would be authorized for the lawful sales, service, and consumption of
624 alcoholic liquors throughout the licensed premises whether these activities were conducted in a
625 building or structure or outdoors while on the private multi-sport complex's licensed premises and
626 as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors
627 and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or
628 leased by the licensee and also operated by the licensee when the golf cart or food truck is located
629 on the private multi-sport complex's licensed premises;

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

632 (H) Meets and is subject to all other private club requirements; and

633 (I) Uses an age verification system approved by the commissioner.

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

§60-7-2a. Dual licensing permitted; conditions.

1 (a) Any licensee defined in §60-7-2 of this code is authorized to apply for and hold
2 additional licenses for the purpose of holding events, such as fairs and festivals, and creating
3 tourism opportunities that will show case businesses in this state.

4 (b) A licensee may host an event on the licensee's licensed premises if the licensee is in
5 good standing with the Commissioner and the licensee submits to the Commissioner its floorplan
6 of the licensed venue in which the event would be held to comprise the event's lawful premises,
7 which shall only include spaces in buildings or rooms of the licensed premises where the licensee
8 has control of the space for the set time period where the space safely accounts for the ingress
9 and egress of the stated members and guests who will be attending the event at the licensed
10 premises. The venue's floorplan during the set time period as stated in the contract shall comprise
11 the licensed premises for the event, which is authorized for the lawful sale, service, and
12 consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine
13 throughout the licensed premises: *Provided*, That the venue shall:

- 14 (1) Have facilities to prepare and serve food and alcohol,
15 (2) have adequate restrooms, and sufficient building facilities for the number of members
16 and guests expected to attend the event, and
17 (3) otherwise be in compliance with health, fire, safety, and zoning requirements.

18 (c) A licensee defined in §60-7-2 of this code may not be limited or restricted in any way
19 as to the number of events that may be held on the premises so long as the licensee continues
20 to operate its primary business in good standing with the Commissioner.

§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 is \$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 is \$1,000
5 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club
6 restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in
7 §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a

8 private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-
9 hole golf course, private farmers market, private food truck, private college sports stadium, private
10 professional sports stadium, private multi-sport complex, private manufacturer club, or a private
11 tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club
12 restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or
13 fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the
14 private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may
15 designate areas within the licensed premises for the lawful sale, service, and consumption of
16 alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel
17 with five or fewer designated areas is \$7,500 and the annual license fee for a private resort hotel
18 with at least six, but no more than 10 designated areas is \$12,500. The annual license fee for a
19 private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500. The
20 annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated
21 areas is \$22,500. A private resort hotel that obtained the license and paid the \$22,500 annual
22 license fee may, upon application to and approval of the commissioner, designate additional areas
23 for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

24 (c) The fee for any license issued following January 1 of any year that expires on June 30
25 of that year is one half of the annual license fee prescribed by subsections (a) and (b) of this
26 section.

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

34 (e) The commissioner shall pay the fees to the State Treasurer for deposit into the General
35 Revenue Fund of the state.

36 (f) The Legislature finds that the hospitality industry has been particularly damaged by the
37 COVID-19 pandemic and that some assistance is warranted to promote reopening and continued
38 operation of private clubs and restaurants licensed under this article. Accordingly, the fees set
39 forth in subsections (a) and (b) of this section are temporarily modified as follows;

40 (1) License fees for the license period beginning July 1, 2021, shall be reduced to one
41 third of the rate set forth in subsections (a) and (b) of this section;

42 (2) License fees for the license period beginning July 1, 2022, shall be two thirds of the
43 rate set forth in subsections (a) and (b) of this section; and

44 (3) License fees for the license period beginning July 1, 2023, and beyond, shall be as set
45 forth in subsections (a) and (b) of this section.

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

1 (a) There is hereby created a special license designated Class S2 private fair and festival
2 license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for
3 on-premises consumption.

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

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

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

10 (3) Pay a nonrefundable nonprorated license fee of \$500; and

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

12 (c) A private fair and festival license under this section shall be for a duration of no more
13 than 10 consecutive days.

14 (d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served
15 pursuant to the license created by this section must be purchased from the licensed distributor
16 that services the area in which the private fair and festival is held or from a resident brewer acting
17 in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. Sales of
18 sealed containers of nonintoxicating beer or nonintoxicating craft beer may be sold for off-
19 premises consumption if the nonintoxicating beer and nonintoxicating craft beer are purchased
20 from the licensed distributor that services the area in which the private fair, festival, or other event
21 is being held and such licensed distributor agrees to offer such sales prior to the start of the private
22 fair, festival, or other event.

23 (e) Wine sold, furnished, tendered, or served pursuant to the license created by this
24 section shall be purchased from a licensed distributor, winery, or farm winery in accordance with
25 §60-8-1 *et seq.* of this code. Sales of sealed containers of wine may be sold for off-premises
26 consumption if the wine is purchased from a licensed distributor, winery, or farm winery and the
27 licensed distributor, winery, or farm winery agrees to offer sales prior to the start of the private
28 fair, festival, or other event.

29 (f) Liquor sold, furnished, tendered, or served pursuant to the license created by this
30 section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous
31 market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 *et seq.*
32 of this code. Sales of sealed containers of liquor may be sold for off-premises consumption if the
33 liquor is purchased from the licensed retail liquor outlet in the market zone or contiguous market
34 zone where the private fair, festival, or other event is occurring and the licensed retail liquor outlet
35 agrees to offer such sales prior to the start of the private fair, festival, or other event.

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

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

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

51 (j) During events authorized by this section, licensees may also sell promotional and other
52 items relating to promoting their business and its products.

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

1 (a) A licensed private club restaurant or private manufacturer club licensed to sell liquor
2 for on-premises consumption may apply for a private delivery license permitting the order, sale,
3 and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler,
4 when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed
5 craft cocktail growler is permitted for off-premises consumption when completed by the licensee
6 to a person purchasing the craft cocktail growler through a telephone, a mobile ordering

7 application, or web-based software program, authorized by the licensee's license. There is no
8 additional fee for a licensed private club restaurant or private manufacturer club to obtain a private
9 delivery license. The order, sale, and delivery process shall meet the requirements of this section.
10 The order, sale, and delivery process is subject to the penalties of this article.

11 (b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery
12 license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a
13 craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted
14 by a third party who obtains a license under this section when a private club restaurant or private
15 manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone
16 orders, a mobile ordering application, or a web-based software program. The private delivery
17 license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on
18 the number of drivers and vehicles.

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

23 (d) *Sale Requirements.* —

24 (1) The craft cocktail growler purchase shall accompany the purchase of prepared food or
25 a meal and the completion of the sale may be accomplished by the delivery of the prepared food
26 or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer
27 club, or third party private delivery licensee;

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

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

36 (4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for
37 each order of food or meal: *Provided*, That the entire delivery order may not contain any
38 combination of craft cocktail growlers of more than 128 fluid ounces total; and

39 (5) A third party private delivery licensee shall not have a pecuniary interest in a private
40 club restaurant or private manufacturer club licensee, as set forth in this article. A third party
41 private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The
42 third party private delivery licensee may not collect a percentage of the delivery order for the
43 delivery of alcohol, but may continue to collect a percentage of the delivery order directly related
44 to the prepared food or a meal. The convenience fee charged by the third-party private delivery
45 licensee to the purchasing person shall be no greater than \$20 per delivery order where a craft
46 cocktail growler is ordered by the purchasing person. For any third party licensee also licensed
47 for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or
48 nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total
49 convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail
50 growler shall not exceed \$20.

51 (e) *Craft Cocktail Growler Delivery Requirements.* —

52 (1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be
53 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third
54 party private delivery licensee shall file each delivery person’s name, driver’s license, and vehicle
55 information with the commissioner;

56 (2) The licensed private club restaurant, private manufacturer club, or third party private
57 delivery licensee shall train delivery persons on verifying legal identification and in identifying the
58 signs of intoxication. The licensee shall submit certification of the training to the commissioner;

59 (3) The third party delivery licensee or the private club restaurant or private manufacturing
60 club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler
61 pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic
62 copy of his or her permit as proof of licensure.

63 (4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third
64 party private delivery licensee, a private club restaurant, or private manufacturer club may occur
65 in the county or contiguous counties where the licensed private club restaurant or private
66 manufacturer club is located;

67 (5) The licensed private club restaurant, private manufacturer club, or third party private
68 delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to
69 addresses located in West Virginia. The licensed private club restaurant, private manufacturer
70 club, or third party private delivery licensee shall account for and pay all sales and municipal
71 taxes;

72 (6) The licensed private club restaurant, private manufacturer club, or third party private
73 delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to
74 any other licensee;

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

77 (8) The licensed private club restaurant, private manufacturer club, or third party private
78 delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft
79 cocktail growler at any address without verifying a person's age and identification as required by
80 this section.

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

82 (1) The delivery person may only permit the person who placed the order through a
83 telephone order, a mobile ordering application, or web-based software to accept the prepared
84 food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with
85 the delivery person's visual review and age verification;

86 (2) Any mobile ordering application or web-based software used shall include the delivery
87 driver's name and vehicle information and delivery shall be subject to legal identification
88 verification;

89 (3) Any telephone ordering system shall maintain a log or record of the purchasing
90 person's identification and details of the sale, accessible by the delivery driver for verification,
91 shall include the delivery driver's name and vehicle information, and delivery shall be subject to
92 legal identification verification;

93 (4) All records are subject to inspection by the commissioner. The licensed private club
94 restaurant, private manufacturer club, or third party private delivery licensee shall retain records
95 for three years, and may not unreasonably withhold the records from the commissioner's
96 inspection; and

97 (5) The third party private delivery licensee or the private club restaurant or private
98 manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this
99 section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic
100 copy of his or her permit as proof of licensure.

101 (g) *Private Cocktail Delivery Permit.* —

102 (1) The licensed private club restaurant, private manufacturer club, or third party private
103 delivery licensee shall obtain and maintain a retail transportation permit for the delivery of
104 prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

105 (2) A third party private delivery licensee, a private club restaurant, or private manufacturer
106 club licensee shall provide vehicle and driver information, requested by the commissioner. Upon

107 any change in vehicles or drivers, the licensee shall update the driver and vehicle information with
108 the commissioner within 10 days of the change.

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

112 (h) *Enforcement.* —

113 (1) The third party private delivery licensee, the private club restaurant, or the private
114 manufacturers club licensed by this section are responsible for any violations committed by their
115 employees or independent contractors under this article, and more than one violation may be
116 issued for a single violation involving multiple licensees, employees, or independent contractors.

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

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

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

§60-7-17. Repealer.

1 [Repealed.]

ARTICLE 8. SALE OF WINES.

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

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 regulate, control, and support the brewing, manufacturing, distribution, sale, consumption,
3 transportation, and storage of wine and its industry in this state to protect the public health,

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

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

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

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

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

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

33 (g) *Wine Growler defined*. — For purposes of this section and section §60-8-6d of the
34 code, “wine growler” means a container or jug that is made of glass, ceramic, metal, or other
35 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and
36 is capable of being securely sealed. The growler may be used by an authorized licensee for
37 purposes of off-premises sales only of wine for personal consumption, and not for resale. The
38 wine served and sold in a sealed wine growler may include ice or water mixed with the wine to
39 create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine
40 growlers shall be sanitized daily and shall be under control and served by the licensee from the
41 secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed
42 wine growler is not an open container under state and local law. A wine growler with a broken
43 seal is an open container under state and local law unless it is located in an area of the motor
44 vehicle physically separated from the passenger compartment. For purpose of this article, a
45 secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band,
46 strip, or sleeve extending around the cap or lid of wine growler to form a seal that shall be broken
47 when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine
48 growler is opened.

49 (h) *Wine Growler requirements*. — A winery or farm winery licensed under this section
50 shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine
51 growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under
52 this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed
53 winery or farm winery under this section may refill a wine growler subject to the requirements of
54 this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling

55 it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken,
56 unsafe, or otherwise unfit to serve as a sealed beverage container.

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

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

69 (k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under
70 this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

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

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

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

1 (a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may
2 apply for a private wine delivery license permitting the order, sale, and delivery of wine in the
3 original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for
4 wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles
5 or cans, or sealed wine growlers is permitted for off-premises consumption when completed by
6 the licensee or the licensee's employees to a person purchasing the wine through a telephone,
7 mobile ordering application, or web-based software program, 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. The order, sale,
10 and delivery process is subject to the penalties of this article.

11 (b) A third party, not licensed for wine sales or distribution, may apply for a private wine
12 delivery license for the privilege of ordering and delivery of wine in the original container of sealed
13 bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order
14 and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is
15 permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing
16 the wine through telephone orders, mobile ordering application, or web-based software program
17 for off-premises consumption. The private wine delivery license non-prorated, nonrefundable
18 annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

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

21 (d) *Sale Requirements.* —

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

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

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

32 (4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per
33 delivery order; and

34 (5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class
35 A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only
36 charge a convenience fee for the delivery of wine as provided in this section. The third-party
37 private wine delivery licensee may not collect a percentage of the delivery order for the delivery
38 of alcohol but may collect a percentage of the delivery order directly related to prepared food or
39 a meal. The convenience fee charged by the third-party private wine delivery licensee to the
40 purchasing person may be no greater than \$20 per delivery order where wine is ordered by the
41 purchasing person. For any third-party private wine delivery licensee also licensed for
42 nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the
43 code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience
44 fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler
45 shall not exceed \$20.

46 (e) *Private Wine Delivery Requirements.* —

47 (1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or
48 older. The third-party private wine delivery licensee or a Class A wine licensee shall file each
49 delivery person's name, driver's license, and vehicle information with the commissioner;

50 (2) The third-party private wine delivery licensee or the Class A wine licensee shall train
51 delivery persons on verifying legal identification and in identifying the signs of intoxication. The
52 third-party private wine delivery licensee shall submit certification of the training to the
53 commissioner;

54 (3) The third party private wine delivery licensee or Class A wine licensee shall hold a
55 retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this
56 section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof
57 of licensure;

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

61 (5) The third-party private wine delivery licensee or Class A wine licensee may only deliver
62 prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party
63 private wine delivery licensee or Class A wine licensee shall account for and pay all sales and
64 municipal taxes;

65 (6) The third-party private wine delivery licensee or Class A wine licensee may not deliver
66 prepared food or a meal, and sealed wine to any other wine licensees;

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

69 (8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver
70 and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a
71 person's age and identification as required by this section.

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

73 (1) The delivery person shall only permit the person who placed the order through a
74 telephone order, a mobile ordering application, or web-based software to accept the prepared
75 food or meal, and wine delivery which is subject to age verification upon delivery with the delivery
76 person's visual review and verification;

77 (2) Any mobile ordering application or web-based software used shall include the delivery
78 driver's name and vehicle information and delivery shall be subject to legal identification
79 verification;

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

84 (4) All records are subject to inspection by the commissioner, and the third-party private
85 wine delivery licensee and Class A wine licensee shall retain the records for inspection for three
86 years. The third-party private wine delivery licensee or Class A wine licensee may not
87 unreasonably withhold the records from the commissioner's inspection; and

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

90 (g) *Private Wine Retail Transportation Permit.* —

91 (1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and
92 maintain a retail transportation permit for the delivery of prepared food and sealed wine.

93 (2) A Class A wine licensee or a third-party private wine delivery licensee shall provide
94 vehicle and driver information, requested by the commissioner. Upon any change in vehicles or
95 drivers, the licensee shall update the driver and vehicle information with the commissioner within
96 10 days of the change.

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

100 (h) *Enforcement.* —

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

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

108 (3) It is a violation for any licensee, its employees, or independent contractors to break
109 the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this
110 subdivision is subject to the maximum penalties available in this article.

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

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

1 (a) A Class B 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 cans, or sealed wine growlers is permitted for off-premises consumption when completed by the
6 licensee or the licensee's employees to a person purchasing the wine through a telephone order,
7 a mobile ordering application, or web-based software program, as authorized by the licensee's

8 license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery
9 license. The order, sale, and delivery process shall meet the requirements of this section, and
10 subject to the penalties of this article.

11 (b) A third party, not licensed for wine sales or distribution, may apply for a private wine
12 delivery license for the privilege of the ordering and delivery of wine in the original container of
13 sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The
14 order and delivery of wine in the original container of sealed bottles or cans, or sealed wine
15 growlers is permitted for off-premises consumption by a third party licensee when sold by a Class
16 B wine licensee to a person purchasing the wine through telephone orders, mobile ordering
17 application, or web-based software program. The private wine delivery license non-prorated,
18 nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and
19 vehicles.

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

22 (d) *Sale Requirements.* —

23 (1) The wine purchase may accompany the purchase of food and the completion of the
24 sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party
25 private wine delivery licensee.

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

29 (3) Food, for purposes of this section, means food that has been cooked, microwaved, or
30 that is pre-packaged food from the manufacturer;

31 (4) An order, sale, or delivery consisting of food and any combination of sealed wine
32 bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

33 (5) A third-party private wine delivery licensee shall not have a pecuniary interest in a
34 Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may
35 only charge a convenience fee for the delivery of wine. The third-party private wine delivery
36 licensee may not collect a percentage of the delivery order for the delivery of alcohol but may
37 collect a percentage of the delivery order directly related to food only. The convenience fee
38 charged by the third-party private wine delivery licensee to the purchasing person shall be no
39 greater than \$20 per delivery order where wine is ordered by the purchasing person. For any
40 third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as
41 set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall
42 not exceed \$20.

43 (e) *Private Wine Delivery Requirements.* —

44 (1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or
45 older. The third-party private wine delivery licensee or a Class B wine licensee shall file each
46 delivery person's name, driver's license, and vehicle information with the commissioner;

47 (2) The third-party private wine delivery licensee or Class B wine licensee shall train
48 delivery persons on verifying legal identification and in identifying the signs of intoxication and
49 certification. The third-party private wine delivery licensee or Class B wine licensee shall submit
50 certification of the training to the commissioner;

51 (3) The third party delivery licensee or Class B wine licensee must hold a retail
52 transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this
53 section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof
54 of licensure;

55 (4) The third-party private wine delivery licensee or Class B wine licensee may only deliver
56 food and sealed wine orders by a third-party private wine delivery licensee or Class B wine
57 licensee in the county where the wine licensee is located;

58 (5) The third-party private wine delivery licensee or Class B wine licensee may only deliver
59 food and sealed wine to addresses located in West Virginia with all sales and municipal taxes
60 accounted for and paid;

61 (6) A third-party private wine delivery licensee or Class B wine licensee may not deliver
62 food and sealed wine to any other wine licensees;

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

64 (8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver
65 and leave food and sealed wine at any address without verifying a person's age and identification
66 as required by this section.

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

68 (1) The delivery person shall only permit the person who placed the order through a
69 telephone, a mobile ordering application, or web-based software to accept the food and wine
70 delivery which is subject to age verification upon delivery with the delivery person's visual review
71 and verification;

72 (2) Any mobile ordering application or web-based software used shall include the delivery
73 driver's name and vehicle information and delivery shall be subject to legal identification
74 verification;

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

79 (4) All records are subject to inspection by the commissioner. The third-party private wine
80 delivery licensee or Class B wine licensee shall retain the records for inspection for three years.
81 The third-party private wine delivery licensee or Class B wine licensee may not unreasonably
82 withhold the records from the commissioner's inspection; and

83 (5) Each vehicle delivering wine shall be issued a private wine retail transportation permit
84 under subsection (g) of this section.

85 (g) *Private Wine Retail Transportation Permit.* —

86 (1) A Class B wine licensee or third party private wine delivery licensee shall obtain and
87 maintain a retail transportation permit for the delivery of food and wine.

88 (2) A Class B wine licensee or third party private wine delivery licensee shall provide
89 vehicle and driver information requested by the commissioner. Upon any change in vehicles or
90 drivers, the licensee shall update the driver and vehicle information with the commissioner within
91 10 days of the change.

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

95 (h) *Enforcement.* —

96 (1) The licensee or third-party private wine delivery licensee are each responsible for any
97 violations committed by their employees or agents under this article, and more than one violation
98 may be issued for a single violation involving multiple licensees, employees, or independent
99 contractors.

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

103 (3) It is a violation for any licensee, its employees, or independent contractors to break
104 the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this
105 subdivision is subject to the maximum penalties available in this article.

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

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, upon conviction thereof, shall be punished
6 by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A
7 private bakery, private cigar shop, private caterer, private club restaurant, private manufacturer
8 club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck,
9 private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor
10 dining and private outdoor street dining, private multi-vendor fair and festival license, private
11 farmers market, private college sports stadium or coliseum, private professional sports stadium,
12 and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in
13 compliance with, §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D),
14 §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), 60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G),
15 §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H),
16 §60-7-8c(b)(14), §60-7-8d, and §60-8-32a of this code; or (b) a private club with more than 1,000
17 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been
18 approved by the Alcohol Beverage Control Commissioner; and which has designated certain
19 seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as
20 noted in the licensee's floorplan, by using a mandatory carding or identification program by which
21 all members or guests being served or sold alcoholic liquors, nonintoxicating beer or
22 nonintoxicating craft beer are asked and required to provide their proper identification to verify

- 23 their identity and further that they are of legal drinking age, 21 years of age or older, prior to each
24 sale or service of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2022.

.....
Governor