WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2985

By Delegates Williams, Statler, Hansen, Young and Rowe

[Introduced January 24, 2023; Referred to the Committee on Political Subdivisions then the Judiciary]

A BILL to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60-6-27, all relating to authorizing municipalities to establish outdoor refreshment areas for consumption of alcoholic beverages and non-intoxicating beer; granting authority and oversight to municipalities to permit these areas; requiring municipal authorization of permitted areas; providing definitions; placing limitations and conditions on the establishment of such areas; requiring permit holders to have valid licenses from the state; requiring public notice; providing the alcoholic beverage control commissioner to regulate the areas; allowing municipality and zoning limitations; establishing limitations on sizes of approved areas; allowing for revocation and periodic renewal requirements for designated areas; and requiring compliance with all state and municipal laws, permits and limitations in permitted areas.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

For the purposes of this chapter:

(1) "Alcohol" means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

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

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

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

(5) "Brewery" means an establishment where beer is manufactured or in any way prepared.

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

(7) "Department" means the organization through which the commission exercises powers imposed upon it by this chapter.

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

(9) "Intoxicated" means a person’s faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.

(10) "Manager" means an individual who is the applicant’s or licensee’s on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

(11) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

(12) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

(13) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by §11-16-2 of this code.

(14) "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.

(15) "Person" means an individual, firm, partnership, limited partnership, corporation, or voluntary association.

(16) "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.

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

(18) "Sale" means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.

(19) "Selling" includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

(20) "Spirits" means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

(21) "State liquor store" means a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

(22) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

(23) "Winery" means an establishment where wine is manufactured or in any way prepared.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-27. Designated Outdoor Refreshment areas authorized

(a) A municipality as defined by §8-1-2 of this code may establish a designated outdoor refreshment area or areas, only as provided by this section, for the purpose of allowing the sale, serving, and consumption of alcoholic liquor and nonintoxicating beer within the designated outdoor refreshment area subject to the requirements of this section and of those established by any municipality establishing the designated outdoor refreshment area.

(b) As used in this section, the following terms mean:

(1) "Designated outdoor refreshment area" means the legally demarcated area established by a municipality for the consumption of alcohol and nonintoxicating beer as described in this section.

(2) "Qualified permit holder" means the holder of a Class A license issued under §11-16-1 *et seq*. or §60-7-1 *et seq*. of this code.

(c) The municipality may authorize that property within the municipality be designated as an outdoor refreshment area or to expand an existing outdoor refreshment area to include additional property within the municipality. If a municipality authorizes consideration of an application to establish an outdoor refreshment area shall require the submission of an application that contains at a minimum, the following:

(1) A map or survey of the proposed outdoor refreshment area in sufficient detail to identify the boundaries of the area, which shall not exceed either of the following, as applicable:

(A) Six hundred forty contiguous acres if the municipality has a population of more than 50,000;

(B) Three hundred twenty contiguous acres if the municipality has a population of 50,000 or less.

(2) A general statement of the nature and types of establishments that will be located within the proposed outdoor refreshment area;

(3) A statement that the proposed outdoor refreshment area complies with subsection (e) of this section;

(4) Evidence that the uses of land within the proposed outdoor refreshment area are in accord with the comprehensive plan or zoning ordinances of the municipality, if the municipality has so adopted;

(5) Proposed requirements for the purpose of ensuring compliance with all state and municipal laws and public health and safety within the proposed outdoor refreshment area.

(d) Prior to authorizing the establishment of a designated outdoor refreshment area, the municipality shall publish public notice of the application as a Class I-0 legal advertisement pursuant to §59-3-2 of this code, the cost of which is paid by the applicant. The municipality shall ensure that the notice states that the application is on file in the office of the clerk or recorder of the municipality and is available for inspection by the public during regular business hours. The municipality also shall indicate in the notice the date and time of any public hearing to be held regarding the application.

(2) Approval of an application requires an affirmative vote of a majority of the governing body of the municipality. Upon approval of the application, the territory described in the application constitutes a designated outdoor refreshment area. The governing body shall provide to the Commissioner and the Superintendent of the State Police notice of the approval of the application and a description of the area specified in the application. If the municipality disapproves the application, the applicant may make changes in the and re-submit any such revised application as provided in subsection (c) of this section.

(e) Limitations on designated outdoor refreshment areas. The creation of designated outdoor refreshment areas under this section is limited as follows:

(1) A municipality with a population of more than 50,000 shall not create more than six outdoor refreshment areas. Any such outdoor refreshment area shall include at least four qualified permit holders.

(2) A municipality with a population of 50,000 or less shall not create more than three outdoor refreshment areas. Any such outdoor refreshment area shall include at least two qualified permit holders.

(f) After receiving notice that an outdoor refreshment area has been approved, the Commissioner shall issue an outdoor refreshment area designation to each qualified permit holder located within the refreshment area that is in compliance with all applicable requirements under §60-1-1 *et seq*. and §11-16-1 *et seq*. of this code, as applicable. The Commissioner shall not charge any fee for the issuance of the designation. Any permit holder that receives such a designation shall comply with all laws and rules that govern its license type, and the applicable public health and safety requirements established for the area under subsection (g) of this section and the legislative act of the municipality establishing the designated outdoor refreshment area. Each qualified permit holder receiving such a designation may serve alcohol or nonintoxicating beer to patrons, as permitted by the qualified permit holder’s license issued by the Commissioner.

(g) At the time of the creation of an outdoor refreshment area, the municipality shall adopt an ordinance that establishes requirements the municipality determines necessary to ensure public health and safety within the area. The municipality shall include in the ordinance, at a minimum, all of the following:

(A) The specific boundaries of the area, including street addresses;

(B) The number, spacing, and type of signage designating the area;

(C) The days and hours of operation for the area;

(D) The estimated number of personnel needed to ensure public safety in the area;

(E) A sanitation plan that will help maintain the appearance and public health of the area;

(F) The estimated number of personnel needed to execute the sanitation plan; and

(G) A requirement that alcohol and nonintoxicating beer be served solely in plastic bottles or other non-glass containers in the area.

The municipality may, but is not required to, include in the ordinance any public health and safety requirements proposed in an application to establish a designated outdoor refreshment area or to expand an established designated outdoor refreshment area, and it may provide additional public health and safety requirements in addition to those required by this subsection, either by including such requirements in the ordinance establishing the designated outdoor refreshment area or by delegating authority to establish such requirements to the executive officer. The municipality may subsequently modify the public health and safety requirements as determined necessary by the legislative authority.

(2) The municipality shall provide to the Commissioner and the Superintendent of the State Police notice of the public health and safety requirements established or modified under this subsection.

(h) If an outdoor refreshment area has been created in accordance with this section, the holder of a Special Event Fair and Festival permit, including any charitable special event fair and festival permit, from Commissioner may apply to the for issuance of an outdoor refreshment area designation. The Commissioner shall issue such a designation if it determines that the permit holder is in compliance with all applicable requirements established under the Commissioners jurisdiction pursuant to §11-1-1 *et seq*. and §60-1-1 *et seq*. of this code, as applicable. A Special Event Fair and Festival Permit holder who receives a designation under this subsection shall do both of the following:

(1) Comply with all laws, and rules that govern its type of permit, and the applicable public health and safety requirements established for the outdoor refreshment area under subsection (g) of this section;

(2) Not block ingress or egress to the outdoor refreshment area or any other licensed premises located within the area.

(j) Within five years after the date of creation of an outdoor refreshment area, and within five years after any determination to continue any designated outdoor refreshment area, the municipality shall review the operation of the area and shall, by ordinance, either renew authorization or dissolve the area. Prior to adopting the ordinance, the municipality shall give notice of its proposed action by publication as a Class I-0 legal advertisement in accordance with §59-3-2 of this code. The municipality shall provide notice of its action to the Commissioner and the Superintendent of the State Police. Upon receipt of the notice, the Commissioner shall revoke all outdoor refreshment area designations issued to qualified permit holders within the dissolved area. If the municipality approves the continued operation of the outdoor refreshment area, the area continues in operation.

(k) At any time, the municipality in which a designated outdoor refreshment area is located may, by ordinance, dissolve all or a part of the outdoor refreshment area. Prior to adopting the ordinance, the legislative authority shall give notice of its proposed action by Class I-0 legal advertisement in accordance with §59-3-2 of the code. If the municipality dissolves all or part of an outdoor refreshment area, the area designated in the ordinance no longer constitutes an outdoor refreshment area. The municipality notice of its actions to the Commissioner and the Superintendent of the State Police. Upon receipt of the notice, the Commissioner shall revoke all outdoor refreshment area designations issued to qualified permit holders or the holder of a Special Event Fair and Festival permit within the dissolved area or portion of the area.

NOTE: The purpose of this bill is to permit municipalities to authorize the establishment of designated outdoor refreshment areas where alcohol and nonintoxicating beer may be served by approved state licensees; establishes criteria and limitations on the size and location of these areas; provides for public notice about proposed designated areas; and requiring prior authorization and periodic review by the municipality.

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