

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]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

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

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

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

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

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

12 prepared.

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

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

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

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

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

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

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

35 (13) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley,
36 malt, hops, or similar products or substitute, and containing not more alcohol than that specified by
37 §11-16-2 of this code.

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

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

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

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

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

63 (19) "Selling" includes solicitation or receipt of orders; possession for sale; and possession

64 with intent to sell.

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

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

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

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

12 (c) The municipality may authorize that property within the municipality be designated as
13 an outdoor refreshment area or to expand an existing outdoor refreshment area to include
14 additional property within the municipality. If a municipality authorizes consideration of an

15 application to establish an outdoor refreshment area shall require the submission of an application
16 that contains at a minimum, the following:

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

19 (A) Six hundred forty contiguous acres if the municipality has a population of more than
20 50,000;

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

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

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

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

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

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

39 (2) Approval of an application requires an affirmative vote of a majority of the governing
40 body of the municipality. Upon approval of the application, the territory described in the application

41 constitutes a designated outdoor refreshment area. The governing body shall provide to the
42 Commissioner and the Superintendent of the State Police notice of the approval of the application
43 and a description of the area specified in the application. If the municipality disapproves the
44 application, the applicant may make changes in the and re-submit any such revised application as
45 provided in subsection (c) of this section.

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

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

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

54 (f) After receiving notice that an outdoor refreshment area has been approved, the
55 Commissioner shall issue an outdoor refreshment area designation to each qualified permit holder
56 located within the refreshment area that is in compliance with all applicable requirements under
57 §60-1-1 et seq. and §11-16-1 et seq. of this code, as applicable. The Commissioner shall not
58 charge any fee for the issuance of the designation. Any permit holder that receives such a
59 designation shall comply with all laws and rules that govern its license type, and the applicable
60 public health and safety requirements established for the area under subsection (g) of this section
61 and the legislative act of the municipality establishing the designated outdoor refreshment area.
62 Each qualified permit holder receiving such a designation may serve alcohol or nonintoxicating
63 beer to patrons, as permitted by the qualified permit holder's license issued by the Commissioner.

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

67 minimum, all of the following:

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

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

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

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

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

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

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

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

82 The municipality may subsequently modify the public health and safety requirements as
83 determined necessary by the legislative authority.

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

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

93 Event Fair and Festival Permit holder who receives a designation under this subsection shall do
94 both of the following:

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

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

100 (j) Within five years after the date of creation of an outdoor refreshment area, and within
101 five years after any determination to continue any designated outdoor refreshment area, the
102 municipality shall review the operation of the area and shall, by ordinance, either renew
103 authorization or dissolve the area. Prior to adopting the ordinance, the municipality shall give
104 notice of its proposed action by publication as a Class I-0 legal advertisement in accordance with
105 §59-3-2 of this code. The municipality shall provide notice of its action to the Commissioner and
106 the Superintendent of the State Police. Upon receipt of the notice, the Commissioner shall revoke
107 all outdoor refreshment area designations issued to qualified permit holders within the dissolved
108 area. If the municipality approves the continued operation of the outdoor refreshment area, the
109 area continues in operation.

110 (k) At any time, the municipality in which a designated outdoor refreshment area is located
111 may, by ordinance, dissolve all or a part of the outdoor refreshment area. Prior to adopting the
112 ordinance, the legislative authority shall give notice of its proposed action by Class I-0 legal
113 advertisement in accordance with §59-3-2 of the code. If the municipality dissolves all or part of an
114 outdoor refreshment area, the area designated in the ordinance no longer constitutes an outdoor
115 refreshment area. The municipality notice of its actions to the Commissioner and the
116 Superintendent of the State Police. Upon receipt of the notice, the Commissioner shall revoke all
117 outdoor refreshment area designations issued to qualified permit holders or the holder of a Special
118 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.