WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3467

By Delegate Young

[Introduced February 14, 2023; Referred to the Committee on Government Organization then the Judiciary]

A BILL to amend and reenact §8-13-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-3, §11-16-11, §11-16-11c, and §11-16-16 of said code; to amend and reenact §60-1-5a and §60-1-5c of said code; to amend and reenact §60-4-3a of said code; to amend said code by adding thereto four new sections, designated §60-6-27 and §60-6-28; to amend and reenact §60-8-16; and to amend said code by adding thereto a new article, designated §60-10-1 and §60-10-2, all relating to allowing municipalities to establish "entertainment zones" that would allow for bars and restaurants to sell drinks for to-go consumption in designated areas; allowing nonresident business owners to open a brewery; directing home sales of beer to be on equal footing with wine, cider, and liquor; allowing retail liquor stores, beer stores, and wine stores to have direct-to-home sales; removing ABV caps on wine, cider, and beer; removing background check and label approval requirements for temporary brewery permit; allowing breweries with a temporary license to sell to any retail store or bar/restaurant; separating the Tax Department from ABCA; restricting employment to just one agency; removing fingerprinting requirement for license/permit applications; providing oversight of ABCA and Tax Department from unilaterally changing or modifying interpretations of state law/code, requiring the ABCA to create an online label database; providing an online submission of ABCA documents and applications; allowing ABCA licensees to pay for license applications/renewals with standard business checks or credit/debit cards; requiring a 15-day maximum time period for processing ABCA paperwork; allowing private clubs to batch cocktails and dispense cocktails without additional approval from the ABCA; allowing wine, cider, and liquor to be dispensed on patios/outdoor spaces; allowing stadiums and arenas to sell liquor and cocktails; removing food sale requirements for carry out alcohol sales at bars and restaurants; legalizing neon beer signs; allowing alcohol manufacturers to own more than one facility; providing term limits for ABCA administration; providing for a third-party audit of ABCA; forbidding the ABCA administration from contacting licensees by phone; requiring the ABCA to announce compliance sweeps/stings/checks in the same manner that DUI checkpoints are announced; removing the monthly "account sweeping" requirement; adjusting the two percent gross tax on distilleries; providing for a license for art gallery beer and wine; and providing for a license for food hall that has separate sales for food and alcohol and shares a communal space.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

(a) (1) Every municipality shall have plenary power and authority to levy and collect a tax upon all purchases within such municipality of intoxicating liquors from the ~~Alcohol Beverage Control Commissioner~~ State Tax Commissioner, from any person licensed to sell wine at retail to the public under the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article: *Provided,* That no municipality shall have authority to levy or collect any such tax on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven, chapter sixty of this code: *Provided, however*, That no municipality shall have authority to levy or collect any such tax on purchases within such municipality of intoxicating liquors or wine in the original sealed package for the purpose of resale in the original sealed package if the final purchase of such intoxicating liquors or wine is subject to the tax imposed under this section, under section nine-d, article three, chapter sixty of this code, or under section twenty-one, article three-a of said chapter. This section shall not be interpreted to authorize a purchase for resale exemption in contravention of section nine-a, article fifteen, chapter eleven of this code. The tax shall be levied upon the purchaser and shall be added to and collected with the price of purchase. The tax shall not exceed five percent of the purchase price.

(2) A copy of any ordinance imposing the tax authorized by this section shall be certified by the mayor of the municipality to ~~the West Virginia Alcohol Beverage Control Commissioner and to~~ the Tax Commissioner. ~~The West Virginia Alcohol Beverage Control Commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases within such municipality of intoxicating liquors from the Alcohol Beverage Control Commissioner, from any person licensed to sell wine at retail pursuant to the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article, and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the State Treasurer and distributed quarterly by the Treasurer upon warrants of the Auditor payable to the municipality~~

(3) Every municipality shall have plenary power and authority to levy and collect a fee from any private club licensee whose premises are situate therein as authorized in section seven, article seven, chapter sixty of this code.

(b) For purposes of this section:

(1) "Original sealed package" means an original package, as defined in this article, bearing an unbroken seal, as defined in this article. For purposes of this article, the term "original sealed package" does not mean or include a case, shipping box, carton, bottle caddy, cargo container, or any other packaging or container that is not in immediate physical contact with its liquid contents and which is not a "container" as defined in this article;

(2) "Original package" means that container, as defined in this article, into which the manufacturer or bottler of a given liquor or wine first placed a given wine or liquor immediately after it was produced, which is intended by the manufacturer or bottler to be the container in which such wine or liquor is to be sold;

(3) "Seal" means a piece of wax, foil, metal, plastic or paper affixed to a container of liquor or wine in such a way that the seal must be broken when the container is opened. The purpose of a seal is to show evidence of opening, tampering or alteration of the container. A seal bears some combination of embossed, printed, engraved or impressed emblems, figures, symbols, words, trademarks, stamps, medallions, marks, or letters for attestation or evidence of authenticity. A seal is typically affixed to a package or container by the manufacturer or bottler of a given wine or liquor. The term "seal" may include a seal provided by or specified by this state and required by law to be affixed to a container of liquor or wine; and

(4) "Container" means a bottle, boxed wine box (including the liner, bag or bladder thereof), cask, can, jug or other holder of liquor or wine, which is in immediate physical contact with the liquid contents, and which is the only means by which its liquid contents are prevented from flowing or leaking out of the holder, and which is intended to be the container in which such wine or liquor is to be sold to final consumers.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled, or otherwise produced, imported, or transshipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

(2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing, importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this article. A brewer may obtain only one brewer’s license for its nonintoxicating beer or nonintoxicating craft beer.

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

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

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

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

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

(8) "Franchise agreement" means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s nonintoxicating beer products, brands, or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer’s assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

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

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

(11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not an open container under federal, state, and local law. A growler with a broken seal is an open container under federal, state, and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant seal, security tape, or other material, as approved by the commissioner, placed on or over the growler’s opening, which seal, security tape or other material is clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.

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

(13) "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.

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

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

(16) "Nonintoxicating beer sampling event" means an event approved by the commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized pursuant to §11-16-11a of this code.

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

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

(19) "Nonresident brewer" means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located outside the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually.

~~(19)~~ (20) "Original container" means the container used by a resident brewer or brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating craft beer for sale at wholesale.

~~(20)~~ (21) "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

~~(21)~~ (22) "Private club" means a license issued pursuant to §60-7-1 *et seq*. of this code.

~~(22)~~ (23) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually.

~~(23)~~ (24) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.

~~(24)~~ (25) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner’s designee.

§11-16-11. Special license for festivals and fairs; license fee and application; license subject to provisions of article; exceptions.

The commissioner may issue a special license to be designated a Class S license for the retail sale of nonintoxicating beer at a festival or fair, provided the festival or fair is sponsored or endorsed by the governing body of either the municipality or of the county wherein the festival or fair is to be conducted. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be ~~$250~~ $50 regardless of the term of the license. The application for such license shall contain such information as the commissioner may require and shall be submitted to the commissioner at least 30 days prior to the first day upon which nonintoxicating beer is to be sold at such festival or fair, and such permit shall extend for 10 days.

A license issued under the provisions of this section and the licensee holding such license shall be subject to all other provisions of this article and the rules, regulations, and orders of the commissioner relating to such special license: *Provided,* That the commissioner may by rule, regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations, or order as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions of section twenty-four of this article: *Provided, however,* That under no circumstances shall the provisions of subdivisions (1), (2) or (3), subsection (a), section eighteen of this article, be waived nor shall any exception be granted with respect thereto.

§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.

(a) An unlicensed brewer or home brewer may obtain a temporary special license, upon meeting the requirements set forth in this section, to offer its nonintoxicating beer or nonintoxicating craft beer for sampling and sales at ~~a fair~~ fairs and ~~festival~~ festivals licensed under §11-16-11 and §11-16-11b of this code, when granted approval by the fair and festival licensee. The unlicensed brewer or home brewer is exempt from the requirements of registering the brand and using a distributor and a franchise agreement due to the limited nature of this temporary license.

(b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule or order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or orders as required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

(c) A brewer or home brewer, regardless or of its designation in its domicile state, that is duly licensed and in good standing in its domicile state, but unlicensed in this state, or an unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a ~~$150~~ $50 nonrefundable and non-prorated fee and submit an application for a temporary license on a ~~one-~~10 day basis. The temporary special license allows the unlicensed brewer or home brewer to sell nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the licensed fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate markup on the nonintoxicating beer or nonintoxicating craft beer.

(2) The unlicensed brewer or home brewer temporary license application shall include, but is not limited to, the person or entity’s name, address, taxpayer identification number, and location; if the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its domicile state; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to sell to a fair or festival licensed under §11-16-11 and §11-16-11b of this code; and any other information required by the commissioner.

(3) The applicant shall include in its application a list of all nonintoxicating beers or nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival for sampling or sale so that the commissioner may review them in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional fee.

(4) An applicant that receives this temporary license for any event licensed under §11-16-11 and §11-16-11b of this code shall provide a signed and notarized agreement acknowledging that it is the applicant’s duty to pay all municipal, local, and sales taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

(5) The unlicensed brewer or home brewer shall submit an application for each temporary special license sought for an event licensed under §11-16-11 and §11-16-11b of this code, at which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for sampling or sale. The license fee covers up to two separate one-day licenses for the event before an additional fee is required. Any applicant desiring to attend more than four events per year or otherwise operate in West Virginia shall seek appropriate licensure as a brewery or resident brewery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, brand registration, franchise requirements, payment of beer barrel tax, and the appointment of a distributor franchise network, this temporary special license for an event licensed under §11-16-11 and §11-16-11b of this code, once granted, permits the licensee to operate in this limited capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this code, subject to the limitations noted in this section.

(7) The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state as required by §11-16-10(f) of this code: *Provided*, That the commissioner may not charge or collect an additional fee for a nonintoxicating beer or nonintoxicating craft beer transportation permit to an applicant seeking a temporary special license under this section.

(8) The licensee is subject to all applicable violations and/or penalties under this article and related legislative rules that are not otherwise excepted by this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions of this code, rules, or orders required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

§11-16-16. ~~Restrictions on nonresident~~ Nonresident brewers, manufacturers and distributors.

~~No brewer or manufacturer whose chief place of business is outside the State of West Virginia shall offer for sale or sell nonintoxicating beer, in the State of West Virginia, or offer any of the same for shipment into this state, except to a distributor who is duly licensed under this article, and no such brewer or manufacturer shall consign, ship or deliver any of the same to any person within the State of West Virginia, or sell and deliver the same outside the State of West Virginia to be transported into the State of West Virginia, except to a duly licensed distributor for delivery at the place of business of such distributor as set forth in such brewer's or manufacturer's license. No such brewer or manufacturer shall have any interest in the business of any distributor or retailer, nor be connected directly or indirectly with any distributor or retailer. Every such brewer or manufacturer shall mail to the commissioner on or before the tenth day of each calendar month, a sworn statement showing all such sales and shipments of nonintoxicating beer made by such brewer or manufacturer during the preceding calendar month. If any such brewer or manufacturer shall violate any of the provisions of this article or shall violate any of the rules, regulations, or order of the commissioner, such brewer or manufacturer shall be punished in like manner as provided for any nonresident brewer who shall violate any provisions of this section. If any such brewer shall violate any of the provisions of this article, he shall not be permitted to sell, ship or deliver any nonintoxicating beer to any distributor or to otherwise engage in any business authorized by this article for a period of not to exceed one year from the date the notice shall be mailed to such brewer or manufacturer by the commissioner of the fact that such brewer or manufacturer has violated the provisions of this article or such rules, regulations, or orders of the commissioner. During such period of one year it shall be unlawful for any distributor or manufacturer or for any other person within the jurisdiction of the State of West Virginia, to buy or receive from such brewer or manufacturer any nonintoxicating beer or have any dealings with such brewer or manufacturer with respect thereto. A distributor, who has not qualified with residence requirements of this article or whose chief place of business is outside the State of West Virginia shall not sell, ship, transport, convey or deliver, or cause to be sold, shipped, transported, conveyed or delivered, directly or indirectly, any nonintoxicating beer to any distributor within the State of West Virginia. If any such distributor shall violate any of the provisions of this article, he shall be punished in like manner as provided for any nonresident brewer or manufacturer who shall violate any provisions of this section~~

Nonresident brewers and manufacturers shall be entitled to the same benefits and obligations provided to resident brewers in this state as provided for in this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter "Farm winery" means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. ~~Any port, sherry, or Madeira wine manufactured by a winery or a farm winery shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks~~

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

§60-1-5c. Alternating wine proprietorships; requirements and limitations.

(a) Notwithstanding the provisions of §60-1-5 of this code, a licensed winery or farm winery may be a party to an alternating wine proprietorship agreement subject to the provisions of this section. As used in this section, "alternating wine proprietorship agreement" means an agreement between a licensed winery or farm winery and a farm entity which allows the farm entity to use the premises of the licensed farm winery to produce wine.

(b) For an alternating wine proprietorship agreement to be lawful:

(1) The farm winery and the farm entity must be in compliance with applicable state laws and rules promulgated thereunder;

(2) The agreement must be between a licensed winery or farm winery and a farm entity located and operating in this state;

(3) The farm entity must produce agricultural products containing sugar as certified by the Agriculture Commissioner and required by law;

(4) Wines produced by the parties must be maintained in separate bonded areas and shall not be comingled;

(5) The farm entity participating in the agreement must separately meet all federal and state requirements for a winery or farm winery;

(6) The farm entity party to the agreement may not produce more than 50,000 gallons of wine and nonfortified dessert wine;

(7) Wine produced by the farm entity party to an agreement must be produced exclusively by natural fermentation;

(8) If port, sherry, or madeira wines are produced by the farm entity party to the agreement, a minimum of 25 percent of the agricultural products used to make the wine must be produced on the farm entity’s property and no more than 25 percent of the agricultural products used may come from an out-of-state source; and

~~(9) Port, sherry, or madeira wine produced by a party to an alternating wine proprietorship agreement may not exceed 22 percent alcohol by volume and must be matured in wooden barrels or casks~~

(c) The commissioner shall propose rules for promulgation in accordance with §29A-3-1 *et seq.* of this code necessary to effectuate the provisions of this section.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a*) Sales of liquor*. — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for complimentary samples offered pursuant to §60-6-1 of this code, customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors as authorized this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq*. and §60-4-1 *et seq.*, of this code, applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees*. — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

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

(e) *Limitations on licensees*. — A distillery, mini-distillery, or micro-distillery may not sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during the initial 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the distillery, mini-distillery, micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. A licensed micro-distillery may not produce more than 10,000 gallons per calendar year at the micro-distillery location. The commissioner may issue more than one distillery or mini-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-6-27. Direct to home sale of alcohol permitted by retail establishments.

Retail liquor stores, beer stores, and wine stores are hereby permitted to conduct direct-to-home sales, so long as other regulations enumerated in this chapter are followed.

§60-6-28. Alcohol Beverage Control Administration Modernization.

(a) The Alcohol Beverage Control Administration ("ABCA") shall remove the fingerprinting requirement for license/permit applications.

(b) The ABCA shall create an online label database.

(c) The ABCA shall allow the online submission of ABCA documents and applications.

(d) ABCA licensees may pay for license applications/renewals with standard business checks or credit/debit cards.

(e) The ABCA shall institute a 15-day maximum time period for processing ABCA paperwork.

(f) The ABCA shall allow private clubs to batch cocktails and dispense cocktails without additional approval from the ABCA.

(g) The ABCA shall permit wine, cider, and liquor to be dispensed on patios and outdoor spaces.

(h) The ABCA shall remove any associated food sale requirements for carry out alcohol sales at bars and restaurants.

(i) The ABCA shall legalize neon beer signs to be utilized by retail establishments for the sale of alcohol.

(j) The ABCA shall allow alcohol manufacturers to own more than one facility, such as a brewery or distillery.

(k) There shall every three years be conducted a third-party audit of ABCA to ensure that the ABCA follows equity of enforcement, maintaining a just and safe workplace. The ABCA shall disclose audit findings to the public and shall be available for review on the ABCA website.

(l) The ABCA shall announce all compliance sweeps, stings, and checks in the same manner provided for in this code that DUI checkpoints are announced to the public.

(m) *Art gallery and gift store beer and wine licensure*:

(1) **The ABCA** may issue an art gallery beer and wine license to a nonprofit or for-profit retail business engaged in the display and sale of original artwork, or copies of original artwork that are reproduced no more than 1,000 times, by an individual artist or a group of artists.

**(2)** The license holder may sell or serve beer and wine at retail for on-premises consumption when snacks are served during normal business hours but not later than midnight.

**(3)** The annual license fee is $100.

**(4)** The license may not be transferred from the location for which the license was originally issued to another location.

(n) The ABCA shall add a license for a food hall that has separate sales for food and alcohol and shares a communal space.

ARTICLE 8. SALE OF WINES.

§60-8-16. Application for license.

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

(1) The name of the applicant, including his or her trade name if any, his or her residence address and the length of his or her residence;

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

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

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

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

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

(7) That the applicant shall include a manager on the applicant’s license application, or a licensee’s renewal application, and further that the manager shall meet all other requirements of an applicant for licensure set forth in this section, including, but not limited to, United States citizenship or naturalization, ~~passing a background investigation~~ being at least 21 years of age, being a suitable person, being of good morals and character, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to: Licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

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

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

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

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

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

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

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

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

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

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

Article 10. Entertainment Zones.

§60-10-1. Legislative findings.

(a) The Legislature finds that the enactment of "entertainment zones", or "designated outdoor refreshment areas (DORAs)" can support the economic vitality of downtown areas in this state. Local communities should work with their appropriate legislative authority to ensure that public health and safety are being met when creating these establishments. Communities across West Virginia's neighboring state of Ohio have created similar entertainment zones and "DORA" districts and have found they can provide an additional attraction for patrons, create a destination for dining and entertainment, and promote building a lively, pedestrian-friendly environment in the area.

(b) Entertainment zones would allow West Virginia communities to designate areas where open container restrictions are loosened, allowing people to buy, carry and drink alcoholic beverages in specified outdoor areas. These entertainment zones can come in various sizes and locations with varying limitations. The goal is to boost local economies. Entertainment zones would boost foot traffic into town centers to create thriving social hubs that can benefit local businesses.

§60-10-2. Establishment of entertainment zones.

(a) Counties and municipalities in this state may create "entertainment zones" to permit bars and restaurants in their counties or municipalities to sell drinks for to-go consumption in designated areas. A county or municipality may draw a mapped-out district in which patrons 21 and over purchase alcoholic beverages from approved restaurants and carry their drinks outside and within the entertainment zone. Any person of legal age in an entertainment zone carrying an open container of beer, wine, or liquor shall be exempt from prosecution under the "Open Container Law" in this state if the drink was purchased from a participating entertainment zone vendor.

(b) Counties and municipalities in this state who choose to create entertainment zones within their communities shall not incur an additional licensing fee, but a standardized cup is required to indicate that the patron purchased a drink within the entertainment zone.

NOTE: The purpose of this bill is to allow municipalities to establish "entertainment zones" that would allow for bars and restaurants to sell drinks for to-go consumption in designated areas. The bill allows non-resident business owners to open a brewery. The bill directs home sales of beer to be on equal footing with wine, cider, and liquor. The bill allows retail liquor stores, beer stores, and wine stores to have direct-to-home sales. The bill removes ABV caps on wine, cider, and beer. The bill removes background check and label approval requirements for temporary brewery permit. The bill allows breweries with a temporary license to sell to any retail store or bar/restaurant. The bill separates the Tax Department from ABCA. The bill restricts employment to just one agency. The bill removes fingerprinting requirement for license/permit applications. The bill provides oversight of ABCA and Tax Department from unilaterally changing or modifying interpretations of state law/code, requiring the ABCA to create an online label database. The bill provides an online submission of ABCA documents and applications. The bill allows ABCA licensees to pay for license applications/renewals with standard business checks or credit/debit cards. The bill requires a 15-day maximum time period for processing ABCA paperwork. The bill allows private clubs to batch cocktails and dispense cocktails without additional approval from the ABCA. The bill allows wine, cider, and liquor to be dispensed on patios/outdoor spaces. The bill allows stadiums and arenas to sell liquor and cocktails. The bill removes food sale requirements for carry out alcohol sales at bars and restaurants. The bill legalizes neon beer signs. The bill allows alcohol manufacturers to own more than one facility. The bill provides term limits for ABCA administration. The bill provides for a third-party audit of ABCA. The bill forbids the ABCA administration from contacting licensees by phone. The bill requires the ABCA to announce compliance sweeps/stings/checks in the same manner that DUI checkpoints are announced. The bill removes the monthly "account sweeping" requirement. The bill adjusts the two percent gross tax on distilleries. The bill provides for a license for art gallery beer and wine. Finally, the bill provides for a license for food hall that has separate sales for food and alcohol and shares a communal space.

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