

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

Senate Bill 534

By Senators Trump, Takubo, and Maroney

[Originating in the Committee on the Judiciary;

reported on February 23, 2023]

1 A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §8-12-26; to amend and reenact §11-16-3, §11-16-6a, §11-16-6d, §11-16-6f,
3 §11-16-8, §11-16-9 of said code; to amend and reenact §60-3A-3a, and §60-3A-8 of said
4 code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact
5 §60-7-2, §60-7-2a, §60-7-6, and §60-7-8a of said code; to amend said code by adding
6 thereto a new section designated §60-7-8g; to amend said code by adding thereto a new
7 section, designated §60-8-6g; to amend and reenact §60-8A-5 of said code; and to amend
8 and reenact §61-8-27 of said code; all relating to nonintoxicating beer, nonintoxicating craft
9 beer, hard cider, wine, and liquor license requirements; defining terms; authorizing
10 municipalities to create private outdoor designated areas; creating special permit for Class
11 A licensees who apply to be qualified permit holders to operate in private outdoor
12 designated areas, setting forth requirements, and setting fees; promoting tourism in the
13 state by permitting authorized brewers, resident brewers, wineries, farm wineries,
14 distilleries, mini-distilleries, and micro-distilleries a limited off-site retail privilege for off-
15 premises consumption sales for nonintoxicating beer manufactured by them and
16 permitting limited complimentary samples at private fair and festivals; providing
17 requirements for the conduct of the sales at private fairs and festivals; requiring payment of
18 taxes, fees and markups, and no license fee; clarifying the nonintoxicating beer growler
19 requirements for contents and sealing; allowing brewer and resident brewer to have
20 additional places of manufacture under one license and based on manufacturing volume
21 capacity; removing limit on nonintoxicating beer or nonintoxicating craft beer which may be
22 included with an order, sale or delivery of multiple meals; allowing commissioner to refuse
23 a license if applicant or manager is not a suitable applicant; increasing number and size of
24 liquor samples that are permitted; requiring manager to be suitable applicant and of good
25 moral character; reducing and modifying food inventory required for private cigar shop,
26 private club bars, and private food truck; allowing a private manufacturer club to have

27 operating food truck or other portable kitchen in lieu of on-premises food preparation
28 facilities; removing acreage requirement for private wedding venue or barn license;
29 clarifying nonintoxicating beer license requirements for persons, trusts and fairs and
30 festivals; clarifying retail liquor outlet license requirements for applicants; clarifying that the
31 statute applying to distilleries and mini-distilleries also applies to micro-distilleries;
32 permitting dually licensed events, and a license fee; creating a private coliseum or center
33 license and specifying license requirements; authorizing private coliseum or center license
34 to conduct a temporary event in conjunction with a private fair and festival licensee and
35 setting forth requirements; setting fees; increasing fee for private fair and festival special
36 license and fee; creating a private food court license and specifying license requirements;
37 lawful admission to dance hall; clarifying dual licensing requirements and authorization for
38 private fair and festivals, requirements, and no license fee; permitting private fairs and
39 festivals to conduct on-premises consumption sales with certain requirements; permitting
40 private fairs and festivals to allow authorized brewers, resident brewers, wineries, farm
41 wineries, distilleries, mini-distilleries, and micro-distilleries to conduct limited off-premises
42 consumption retail sales with certain requirements from the private fair and festival's
43 licensed premises; permitting a private wine restaurant to operate a separately licensed
44 but connected wine specialty shop; and exempting permit holder operating a private
45 outdoor designated area, private coliseum or center licensee, or private food court from
46 prohibition on admitting persons under the age of 18.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-26. Authorizing municipalities to create private outdoor designated areas.

1 (a) In addition to all other powers and duties conferred by law upon municipalities,
2 municipalities are empowered and authorized pass an ordinance establishing private outdoor
3 designated areas as described in §60-7-8g of this code.

4 (b) The municipality shall include in the ordinance, at a minimum, all of the following:

5 (1) Requirements for the purpose of ensuring compliance with all state and municipal laws,
6 and public health and safety within a private outdoor designated area;

7 (2) The proposed outdoor designated area or proposed licensed premises shall be
8 indicated on a submitted map or survey in sufficient detail to identify the boundaries of the area,
9 subject to the limitations in subsection (b) of this section;

10 (3) A general statement of the nature and types of qualified permit holders that may
11 operate within the proposed outdoor designated area;

12 (4) That certain public property that is legally demarcated by the ordinance is within the
13 proposed private outdoor designated area and such area is in compliance with the comprehensive
14 plan or zoning ordinances of the municipality, if the municipality has so adopted, for the
15 consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer;

16 (5) The specific boundaries of the private outdoor designated area, including street
17 addresses;

18 (6) The number, spacing, and type of signage designating the private outdoor designated
19 area;

20 (7) The days and hours of operation for the private outdoor designated area which may not
21 be greater than, authorized by §11-16-1 et seq. and chapter 60 of this code, but may be less than;

22 (8) The estimated number of personnel needed to ensure public safety and efficient
23 operations in the private outdoor designated area;

24 (9) A sanitation plan that will help maintain the appearance and public health of the private
25 outdoor designated area, including the number of restrooms and trash receptacles.

26 (10) A requirement that liquor, wine, nonintoxicating beer, and nonintoxicating craft beer be
27 served in non-glass containers, not greater than 18 fluid ounces, approved by the municipality and
28 the commissioner as set forth in §60-7-8g of this code; and

29 (11) Public health and safety measures, and requirements to meet compliance with current
30 health permitting and zoning requirements.

31 (c) The municipality shall provide to the commissioner notice of the approval of the private
32 outdoor designated area and identify the qualified permit holders that will be applying for permits
33 set forth in §60-7-8g of this code.

34 (d) The municipality shall be responsible for ensuring compliance with its ordinances and
35 compliance with all criminal laws associated with the operation of a private outdoor designated
36 area. The municipality shall provide the commissioner copies of all non-compliance and violations.
37 The commissioner shall ensure all qualified permit holders operate in accordance with
38 requirements set forth in §11-16-1 et seq. and chapter 60 of this code.

39 (e) The municipality shall have the authority to dissolve a private outdoor designated area
40 by ordinance and further may suspend a private outdoor designated area immediately when in the
41 interest of public safety.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

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

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

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

16 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a
17 freestanding liquor retail outlet, licensed pursuant to §60-1-1 *et seq.* of this code.

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a
19 mixed retail liquor outlet licensed pursuant to §60-1-1 *et seq.* of this code.

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

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place
24 of business ~~shall be~~ is within this state. For purposes of a distributor only, the term "person" means
25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,
26 association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
29 distributor license that are unlawful acts or violations of §11-16-1 *et seq.* of this code
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

31 (8) "Franchise agreement" means the written agreement between a brewer and a
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,

33 which ~~agreement~~ has been approved by the commissioner. The franchise agreement binds the
34 parties so that a distributor, appointed by a brewer, may distribute all the brewer's nonintoxicating
35 beer products, brands, or family of brands imported and offered for sale in West Virginia, including,
36 but not limited to, existing brands, line extensions, and new brands all in the brewer's assigned
37 territory for the distributor. All brands and line extensions being imported or offered for sale in West
38 Virginia must be listed by the brewer in the franchise agreement or a written amendment to the
39 franchise agreement. A franchise agreement may be amended by mutual written agreement of the
40 parties as approved by the commissioner with identical terms and conditions for a brewer and all
41 its distributors. Any approved amendment to the franchise agreement becomes a part of the
42 franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a
43 franchise agreement. A distributor terminated by a brewer as provided in this article and the
44 promulgated rules no longer has a valid franchise agreement. If a brewer has reached an
45 agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a
46 successor distributor who accedes to all the rights of the cancelled or terminated distributor.

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

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

58 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other

59 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and
60 must be capable of being securely sealed. The growler is ~~utilized~~ used by an authorized licensee
61 for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for
62 personal consumption not on a licensed premise and not for resale. The nonintoxicating beer or
63 nonintoxicating craft beer served and sold in a sealed growler may include ice or water mixed with
64 the nonintoxicating beer or nonintoxicating craft beer to create a frozen nonintoxicating beer or
65 nonintoxicating craft beer beverage. Any frozen nonintoxicating beer or nonintoxicating craft beer
66 beverage machine used for filling growlers shall be sanitized daily, shall be under the control of the
67 licensee in the secure area, and served to the patron by the licensee from the secure area.
68 Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not
69 an open container under federal, state, and local law. A growler with a broken seal is an open
70 container under federal, state, and local law unless it is located in an area of the motor vehicle
71 physically separated from the passenger compartment. The secure sealing of a growler requires
72 the use of a ~~tamper-resistant~~ tamper-evident seal, security tape, or other material, as approved by
73 the commissioner, placed on or over the growler's opening, which seal, security tape or other
74 material is clearly marked with the date of the secure sealing by the authorized licensee who is
75 selling the growler.

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

84 (13) "Manager" means an individual who is the applicant's or licensee's on-premises

85 employee, member, partner, shareholder, director, or officer who meets the licensure
86 requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively
87 manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full
88 and apparent authority or actual authority to act on behalf of the applicant or licensee. Such
89 duties include but are not limited to: Coordinating staffing; reviewing and approving payroll;
90 ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable;
91 and managing security staff, security systems, video, and other security equipment; and any
92 further acts or actions involved in managing the affairs of the business, on behalf of owners,
93 partners, members, shareholders, officers, or directors.

94 (14) "Nonintoxicating beer" means all natural cereal malt beverages or products of the
95 brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and
96 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
97 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at
98 least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by
99 weight, or 15 percent alcohol by volume, whichever is greater. The word "liquor", as used in §60-1-
100 1 *et seq.* of this code, does not include or embrace nonintoxicating beer nor any of the beverages,
101 products, mixtures, or preparations included within this definition.

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

109 (16) "Nonintoxicating beer sampling event" means an event approved by the
110 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized

111 pursuant to §11-16-11a of this code.

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

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

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

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

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

126 (22) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
127 nonintoxicating craft beer whose principal place of business and manufacture is located in the
128 State of West Virginia; which may also have multiple manufacturing locations located in West
129 Virginia as set forth in §11-16-9 of the code; and which does not brew or manufacture more than
130 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually at all manufacturing
131 locations in the aggregate and does not self-distribute more than 10,000 barrels thereof in the
132 State of West Virginia annually from all manufacturing locations in the aggregate.

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

136 (24) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the

137 commissioner's designee.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

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 nonintoxicating beer and nonintoxicating craft beer and its industry
4 in this state in order to protect the public health, welfare, and safety of the citizens of this state, and
5 promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident
6 brewer with its principal place of business and manufacture located in this state to have certain
7 abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer
8 manufactured in this state for the benefit of the citizens of this state, the state's growing brewing
9 industry, and the state's hospitality and tourism industry, all of which are vital components for the
10 state's economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal
12 place of business and manufacture located in the State of West Virginia may offer only
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
14 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for
15 consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give,
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business
18 and manufacture located in the State of West Virginia, except for the limited purpose of
19 complimentary samples as permitted in subsection (c) of this section.

20 (c) *Complimentary samples.* — A licensed brewer or resident brewer with its principal
21 place of business and manufacture located in the State of West Virginia may only offer
22 complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the
23 brewer's or resident brewer's principal place of business and manufacture located in the State of

24 West Virginia. The complimentary samples may be no greater than two ounces per sample per
25 patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per day.
26 A licensed brewer or resident brewer providing complimentary samples shall provide
27 complimentary food items to the patron consuming the complimentary samples; and prior to any
28 sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and
29 that the patron is not visibly intoxicated.

30 (d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall
31 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when
32 conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all
33 applicable requirements and penalties in this article. In the interest of promoting tourism
34 throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating beer
35 or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege at
36 private fair and festivals, for off-premises consumption sales of only the brewer or resident
37 brewer's sealed nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an
38 approved private fair and festival, an authorized brewer or resident brewer shall provide a copy of
39 a written agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured by
40 the brewer or resident brewer at the private fair and festival's licensed premises. If approved, an
41 authorized brewer or resident brewer may conduct off-premises consumption sales of their
42 nonintoxicating beer or nonintoxicating craft beer from a designated booth at the private fair and
43 festival as set forth in §60-7-8a of this code. All authorized and approved brewers or resident
44 brewers conducting the off-premises consumption sales shall comply with all retail requirements in
45 §11-16-1 et seq. of this code, and specifically with respect to all markups, taxes, and fees.
46 Additionally, an authorized brewer or resident brewer may provide complimentary samples to
47 patrons who are 21 years of age or over and who are not intoxicated in the amounts set forth in
48 subsection (c).

49 (e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section

50 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any
51 other taxes and fees required, and meet applicable licensing provisions as required by this chapter
52 and by rule of the commissioner.

53 (f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise a
54 particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the
55 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating
56 craft beer subject to state and federal requirements or restrictions. The advertisement may not
57 encourage intemperance.

58 (g) *Growler requirements.* — A licensed brewer or resident brewer under this section ~~must~~
59 shall fill a growler and patrons are not permitted to access the secure area or fill a growler. A
60 licensed brewer or resident brewer under this section ~~must~~shall sanitize, fill, securely seal, and
61 label any growler prior to its sale. A licensed brewer or resident brewer under this section may only
62 offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or
63 nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal
64 consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer
65 under this section may refill a growler subject to the requirements of this section. A licensed
66 brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed
67 brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken,
68 unsafe, or otherwise unfit to serve as a sealed beverage container.

69 (h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling
70 growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of
71 the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer
72 in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft
73 beer in the growler, and the date the growler was filled or refilled, and, further, all labeling on the
74 growler shall be consistent with all federal labeling and warning requirements.

75 (i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this

76 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and
77 county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer
78 shall sanitize, in accordance with all state and county health requirements, all taps, tap lines,
79 pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to
80 comply with this subsection may result in penalties under §11-16-23 of this code.

81 (j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized
82 under this section to sell growlers.

83 (k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or
84 resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or
85 resident brewer's principal place of business and manufacture located in the State of West
86 Virginia. No more than one brewer or resident brewer license may be issued to a single person or
87 entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or
88 resident brewer under this section may only conduct tours, give complimentary samples, and sell
89 growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer
90 or resident brewer authorized under this section shall be subject to the applicable penalties under
91 §11-16-23 of this code for violations of this section.

92 (l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health
93 concerning sanitation, ~~is authorized to~~ may propose rules for legislative approval, pursuant to
94 §29A-3-1 *et seq.* of this code, to implement this section.

ARTICLE 16. NONINTOXICATING BEER.

§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.

95 (a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
96 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
97 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a

98 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
99 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is
100 permitted for off-premises consumption when completed by the licensee or the licensee's
101 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by
102 telephone, a mobile ordering application, or a web-based software program, as authorized by the
103 licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a
104 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
105 process shall meet the requirements of this section. The order, sale, and delivery process is
106 subject to the penalties of this article.

107 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or
108 distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for
109 the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or
110 nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers,
111 from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or
112 nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer
113 sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through
114 telephone orders, a mobile ordering application, or a web-based software program. The annual
115 nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third-party entity,
116 with no limit on the number of drivers and vehicles. The delivery license fee under this subsection
117 may not be prorated nor refunded.

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

121 (d) *Sale Requirements.* —

122 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the
123 purchase of prepared food, or a meal and the completion of the sale may be accomplished by the

124 delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the
125 Class A retail dealer or third-party licensee;

126 (2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21
127 years of age or older, ~~shall~~ may not be visibly or noticeably intoxicated at the time of delivery, and
128 shall meet the requirements set forth in this article for the sale of nonintoxicating beer or
129 nonintoxicating craft beer;

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

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

137 ~~(5)~~ (4) A third-party delivery licensee may not have a pecuniary interest in a Class A retail
138 dealer, as set forth in this article, therefore a third-party delivery licensee may only charge a
139 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The
140 third-party licensee may not collect a percentage of the delivery order for the delivery of alcohol,
141 but may continue to collect a percentage of the delivery order directly related to the prepared food
142 or a meal. The convenience fee charged by the third-party delivery licensee to the person
143 purchasing may not be greater than \$20 per delivery order where nonintoxicating beer or
144 nonintoxicating craft beer are ordered by the purchasing person. For any third-party licensee also
145 licensed for wine growler delivery as set forth in §60-8-6c of this code, or craft cocktail growler
146 delivery as set forth in §60-7-8f of this code, the total convenience fee of any order, sale, and
147 delivery of a sealed growler, wine growler, or craft cocktail growler ~~shall~~ may not exceed \$5.

148 (e) *Delivery Requirements.* —

149 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating

150 craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third-party
151 delivery licensee shall file each delivery person's name, driver's license, and vehicle information
152 with the commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

193 (g) *Retail Transportation Permit.* —

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

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

201 (h) *Enforcement.* —

202 (1) A Class A retail dealer or third-party delivery licensee is responsible for any violations
203 committed by their employees or independent contractors under this article, and more than one
204 violation may be issued for a single violation involving multiple Class A retail dealers or licensees,
205 employees, or independent contractors.

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

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

212 (4) For purposes of criminal enforcement of the provisions of this article, persons ordering,
213 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.**

214 (a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
215 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
216 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a
217 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
218 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is
219 permitted for off-premises consumption when completed by the licensee or the licensee's
220 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a
221 telephone, a mobile ordering application, or web-based software program, as authorized by the
222 licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a
223 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
224 process shall meet the requirements of this section. The order, sale, and delivery process is

225 subject to the penalties of this article.

226 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or
227 distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for
228 the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or
229 nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers,
230 from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or
231 nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer
232 sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a
233 telephone order, a mobile ordering application, or web-based software program. The
234 nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third-
235 party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under
236 this subsection may not be prorated nor refunded.

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

240 (d) *Sale Requirements.* —

241 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the
242 purchase of food and the completion of the sale may be accomplished by the delivery of food and
243 nonintoxicating beer or nonintoxicating craft beer by the licensee or third-party licensee;

244 (2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21
245 years of age or older, ~~shall~~ may not be visibly or noticeably intoxicated at the time of delivery, and
246 meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating
247 craft beer;

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

250 ~~(4) An order, sale, or delivery consisting of food and any combination of sealed~~

251 ~~nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess~~
252 ~~of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and~~

253 (5) ~~(4)~~ A third-party delivery licensee shall may not have a pecuniary interest in a Class B
254 retail dealer, as set forth in this article. A third-party delivery licensee may only charge a
255 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The
256 third-party licensee may not collect a percentage of the delivery order for the delivery of
257 nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the
258 delivery order directly related to food. The convenience fee charged by the third-party delivery
259 licensee to the purchasing person may not be greater than \$20 per delivery order. For any third-
260 party licensee also licensed for wine delivery, as set forth in §60-8-6f of this code, the total
261 convenience fee for any order, sale, and delivery of sealed wine may not exceed \$20.

262 (e) *Delivery Requirements.* —

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

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

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

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

276 (5) A Class B retail dealer and a third-party licensee may only deliver food and sealed

277 nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B
278 retail dealer and a third-party licensee shall pay and account for all sales and municipal taxes;

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

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

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

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

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

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

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

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

302 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be

303 issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

304 (g) *Retail Transportation Permit.* —

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

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

311 (h) *Enforcement.* —

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

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

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

322 (4) For purposes of criminal enforcement of the provisions of this article, persons ordering,
323 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 members
6 or officers. If a person, firm, partnership, limited partnership, limited liability company, association,
7 corporation, or trust applies for a license as a distributor, the person, or in the case of a firm,
8 partnership, limited partnership, limited liability company, association, or trust, the members,
9 officers, trustees, or other persons in active control of the activities of the limited liability company,
10 association, or trust relating to the license, shall include the residency for these persons on the
11 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, be a suitable applicant, and meet other requirements, all
15 as set forth in this article and the rules promulgated ~~thereunder~~, hereunder, all in the interest of
16 protecting public health and safety and being a suitable applicant or licensee. In order to maintain
17 licensure, a licensee shall notify the commissioner immediately of a change in managers. If the
18 applicant is a trust or has a trust as an owner, the trustees, or other persons in active control of the
19 activities of the trust relating to the license, shall provide a certification of trust as described in
20 §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-
21 10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security
22 numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and
23 beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of
24 trust shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or
25 legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary
26 related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any
27 beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal
28 guardian include in the certification of trust and state under oath his or her name, address, Social
29 Security number, and birth date;

30 (2) The place of birth of the applicant, that he or she is a citizen of the United States and of

31 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a
32 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; is 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 by
49 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; 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 the
59 continuance of the license; and

60 (8) That the applicant has not during five years preceding the date of the application had a
61 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. For
75 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 the
77 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~~have not been convicted
79 of a felony in the previous five years before application, ~~has~~have not been convicted of a crime
80 involving fraud, dishonesty, or deceit in the previous five years before application, ~~has~~have not
81 been convicted of a felony for violating any alcohol-related distribution laws; ~~having made no~~ have
82 not made any false statements or material misrepresentations; involving no hidden ownership;

83 and having no persons with an undisclosed pecuniary interest contained in the application; and if
84 there are no other omissions or failures by the applicant to complete the application, as
85 determined by the commissioner, the commissioner shall issue a license authorizing the applicant
86 to sell nonintoxicating beer or 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 state or
92 federal alcohol-related distribution laws; and (D) that the applicant or the manager is not a suitable
93 applicant;

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

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

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

**§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of
nonintoxicating beer permitted; distributors; brewers; brewpubs.**

1 (a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of
2 nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active
3 license as required by this article. The license period begins on July 1 of each year and ends on

4 June 30 of the following year. If the license is granted for a shorter period, then the license fee shall
5 be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That if a
6 licensee fails to complete a renewal application and make payment of its annual license fee in
7 renewing its license on or before June 30 of any subsequent year, then an additional \$150
8 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or
9 refunded, prior to the processing of any renewal application and applicable full year annual license
10 fee; and furthermore, a licensee who continues to operate after the expiration of its license is
11 subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined
12 by the commissioner.

13 (b) The annual license fees are as follows:

14 (1) Retail dealers shall be divided into two classes: Class A and Class B.

15 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the
16 license fee for social, fraternal, or private clubs not operating for profit, and which have been in
17 continuous operation for two years or more immediately preceding the date of application, is \$150:
18 *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment
19 of an annual license tax of \$10 for each dining, club, or buffet car in which the beer is dispensed.
20 Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell
21 nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other
22 Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed,
23 for consumption on the licensed premises or off the licensed premises. Class A licensees may sell
24 nonintoxicating beer or nonintoxicating craft beer for consumption off the licensed premises when
25 it is in a sealed original container and sold for personal use, and not for resale. Class A licensees
26 shall provide prepared food or meals along with sealed nonintoxicating beer or nonintoxicating
27 craft beer in the original container or in a sealed growler as set forth for sales and service in §11-
28 16-6d of this code, to a purchasing person who is in-person or in-vehicle picking up prepared food
29 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-to-go, subject to

30 verification that the purchasing person is 21 years of age or older, and not visibly or noticeably
31 intoxicated, and as otherwise specified in this article.

32 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and
33 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to sell
34 nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for
35 consumption off the licensed premises. A Class B retailer may sell to a purchasing person, for
36 personal use, and not for resale, quantities of draught beer ~~n~~ in original containers that are no
37 larger in size than one-half barrel for off-premises consumption. The commissioner may only issue
38 a Class B license to the proprietor or owner of a grocery store. For the purpose of this article, the
39 term "grocery store" means any retail establishment commonly known as a grocery store or
40 delicatessen, and caterer or party supply store, where food or food products are sold for
41 consumption off the premises, and includes a separate and segregated portion of any other retail
42 store which is dedicated solely to the sale of food, food products, and supplies for the table for
43 consumption off the premises. Caterers or party supply stores shall purchase the appropriate
44 licenses from the Alcohol Beverage Control Administration.

45 (C) A Class A retail dealer may contract, purchase, or develop a mobile ordering
46 application or web-based software program to permit the ordering and purchase of nonintoxicating
47 beer or nonintoxicating craft beer, as authorized by the licensee's license. The nonintoxicating
48 beer or nonintoxicating craft beer shall be in a sealed original container or a sealed growler and
49 meet the requirements of §11-16-6d of this code.

50 (2) For a distributor, the license fee is \$1,000 for each place of business.

51 (3) For a brewer or a resident brewer with its principal place of business or manufacture
52 located in this state and who produces:

53 (A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating
54 craft beer, the license fee is ~~\$500~~ \$250 for each place of manufacture, and no more than three
55 places of manufacture are permitted for licensure;

56 (B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating
57 beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture, and no
58 more than five places of manufacture are permitted for licensure;

59 (C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the
60 license fee is \$1,500 for each place of manufacture.

61 (D) A brewer or resident brewer licensed under paragraph (A) or (B) of this subdivision
62 shall receive one license for use at all places of manufacture; each place of manufacture shall
63 meet all licensing requirements in this article and the rules; and all places of manufacture shall be
64 noted on the one brewer or resident brewer license in compliance with §11-16-5 and §11-16-6a(k)
65 of this code.

66 (4) For a brewer whose principal place of business or manufacture is not located in this
67 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections
68 (c), (d), and (e) of this section: *Provided*, That a brewer whose principal place of business or
69 manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating
70 beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be
71 subject to the variable license fees of subdivision (3), subsection (b) of this section and the
72 requirements set out in subsections (c), (d), and (e) of this section subject to investigation and
73 approval by the commissioner as to brewer requirements.

74 (5) For a brewpub, the license fee is \$500 for each place of manufacture.

75 (c) As part of the application or renewal application and in order to determine a brewer or
76 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the
77 commissioner, on a form provided by the commissioner, with an estimate of the number of
78 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it may produce during the
79 year based upon the production capacity of the brewer's or resident brewer's manufacturing
80 facilities and the prior year's production and sales volume of nonintoxicating beer or
81 nonintoxicating craft beer.

82 (d) On or before July 15 of each year, every brewer, or resident brewer who is granted a
83 license shall file a final report, on a form provided by the commissioner, that is dated as of June 30
84 of that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
85 barrels and gallons produced at its principal place of business and other sites of manufacture
86 during the prior year.

87 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the
88 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with
89 the application or renewal application for a brewer's or resident brewer's license for that period,
90 then the brewer or resident brewer shall include a remittance for the balance of the license fee
91 pursuant to this section that would be required for the final, higher level of production.

92 (f) Any brewer or resident brewer failing to file the reports required in subsections (c) and
93 (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion
94 of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

95 (g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a
96 nonintoxicating beer floor plan extension is \$50, and the fee may not be prorated or refunded. A
97 licensee shall submit an application, certification that the event meets certain requirements in this
98 code and rules, and any other information required by the commissioner, at least 15 days prior to
99 the event, all as determined by the commissioner.

100 (h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good
101 standing with the commissioner, may apply, on a form provided by the commissioner, to sell,
102 serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption
103 in an outdoor dining area or outdoor street dining area, as authorized by any municipal
104 government or county commission in the which the licensee operates. The Class A retail dealer
105 shall submit to the municipal government or county commission, for approval, a revised floorplan
106 and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the
107 commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or

108 private outdoor dining, the approved and bounded outdoor area need not be adjacent to the
109 licensee's licensed premises, but in close proximity and under the licensee's control with right of
110 ingress and egress. For purposes of this section, "close proximity" means an available area within
111 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a
112 nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in
113 conjunction with a temporary private outdoor dining or temporary private outdoor street dining area
114 set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary private
115 wine outdoor street dining set forth in §60-8-32a of this code.

116 (i) For purposes of this article, "nonintoxicating beer or nonintoxicating craft beer outdoor
117 dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining" includes dining
118 areas that are:

119 (1) Outside and not served by an HVAC system for air handling services and use outside
120 air;

121 (2) Open to the air; and

122 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
123 approve a partial enclosure with up to three temporary or fixed walls. Any area where seating is
124 incorporated inside a permanent building with ambient air through HVAC is not considered outdoor
125 dining pursuant to this subsection.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

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 may
2 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 is
12 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~~ Three separate and individual ~~sample~~ samples serving per customer verified to be
15 21 years of age or older; and

16 (2) ~~One ounce~~ One and one-half ounces in total volume. Samples may be mixed with each
17 other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not
18 exceed one and one-half ounces.

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

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

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

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

25 (1) Under the age of 21 years;

26 (2) Intoxicated.

27 (g) A liquor sampling event shall:

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

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

30 (h) Any liquor bottle used for sampling must be from the inventory of the licensee, and

31 clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any
32 liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the
33 licensed premises immediately following the event.

34 (i) Violations of this section are subject to the civil and criminal penalties set forth in §60-
35 3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

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

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

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

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

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

42 (d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10
43 of this code and ~~no~~ an applicant shall not be issued or eligible to hold a retail license under this
44 article, if the applicant or any executive:

45 (1) ~~The applicant has~~ Has been, within the five years preceding the date of application: (A)
46 Convicted in this state of any felony; or (B) convicted of a crime involving fraud, dishonesty, or

47 deceit; or (C) convicted of any felony in this or any other state court or any federal court for a
48 violation of state or federal alcohol-related distribution laws; or

49 (2) Any executive officer or other principal officer, partner, or member of the applicant, or
50 any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership,
51 or other interests in the applicant, has been, within the five years preceding the date of application:

52 (A) Convicted in this state of any felony; or (B) convicted of a crime involving fraud, dishonesty, or
53 deceit; or (C) convicted of any felony in this or any other state court or any federal court for a
54 violation of state or federal alcohol-related distribution laws.

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

ARTICLE 4. LICENSES.

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

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

14 (b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or

15 micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16,
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-
17 26 of this code, and the provisions of §60-3-1 *et seq.* and §60-4-1 *et seq.* of this code, applicable to
18 liquor retailers and distillers. In the interest of promoting tourism throughout the state, every
19 licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized,
20 with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales
21 of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days
22 prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-
23 distillery shall provide a copy of a written agreement to sell only liquor manufactured by the
24 licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed
25 premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct off-
26 premises consumption sales of their liquor from a designated booth at the private fair and festival
27 as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and
28 micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-
29 3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups,
30 taxes, and fees. Additionally, every authorized distillery, mini-distillery, and micro-distillery may
31 provide complimentary samples to patrons who are 21 years of age and older and who are not
32 intoxicated, not to exceed three separate West Virginia product brands one fluid ounce samples
33 per patron, per day.

34 (c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay
35 all taxes and fees required of licensed retailers and meet applicable licensing provisions as
36 required by this chapter and by rule of the commissioner, except for payments of the wholesale
37 markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all
38 liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises
39 consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment
40 fee to be paid to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-

41 distillery, or micro-distillery shall not be priced less than the price set by the commissioner
42 pursuant §60-3A-17 of this code.

43 (d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery
44 shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for
45 the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection
46 shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in
47 the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone
48 retailer's annual gross prior years pretax value sales. The maximum amount of market zone
49 payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is
50 \$15,000 per annum.

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

65 (f) *Building code and tax classification.* — Notwithstanding any provision of this code to the
66 contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this

67 article on a property does not change the nature or use of the property which otherwise qualifies as
68 agricultural use for building code and property tax classification purposes.

§60-4-3b. Winery and farm winery license to manufacture and sell.

1 (a) An operator of a winery or farm winery may offer wine produced by the winery, farm
2 winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the
3 winery or farm winery for consumption off the premises only. Customers may consume wine on the
4 premises when an operator of a winery or farm winery offers complimentary samples pursuant to
5 §60-6-1 of this code, the winery or farm winery is licensed as a private wine restaurant, or the
6 winery or farm winery is licensed as a private manufacturer club. Customers may not consume any
7 wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of
8 this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or
9 farm winery license: *Provided*, That under this subsection, a licensed winery or farm winery may
10 offer complimentary samples of wine manufactured by that licensed winery or farm winery for
11 consumption on the premises only on Sundays beginning at 6:00 a.m. in any county in which the
12 same has been approved as provided in §7-1-3ss of this code. Notwithstanding any other
13 provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine,
14 for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for off-
15 premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise
16 determined by the residents of the county pursuant to §7-1-3ss of this code.

17 (b) Complimentary samples allowed by the provisions of this section may not exceed two
18 fluid ounces and no more than three samples may be given to a patron in any one day.

19 (c) Complimentary samples may be provided only for on-premises consumption.

20 (d) A winery, farm winery, or farm entity, pursuant to §60-1-5c of this code, may offer for
21 retail sale from their licensed premises sealed original container bottles of wine for off-premises
22 consumption only.

23 (e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding

24 a multi-capacity license and a private wine restaurant license may offer wine by the drink or glass
25 in a private wine restaurant located on the property of the winery, farm winery, or farm entity
26 licensed pursuant to §60-1-5c of this code.

27 (f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*,
28 §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and
29 suppliers when properly licensed in such capacities.

30 (g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine
31 retailers and meet applicable licensing provisions as required by this chapter and by rules
32 promulgated by the commissioner.

33 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
34 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
35 §60-8-1 *et seq.* of this code.

36 (3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant
37 to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original
38 sealed package for the purpose of resale in the original sealed package, if the final purchase of the
39 wine is subject to the excise tax or if the purchase is delivered outside this state.

40 (4) ~~No~~ A liter tax shall not be collected on wine sold in the original sealed package for the
41 purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the
42 liter tax.

43 (5) This section shall not be interpreted to authorize a purchase for resale exemption in
44 contravention of §11-15-9a of this code.

45 (h) A winery or farm winery may advertise a particular brand or brands of wine produced by
46 it. The price of the wine is subject to federal requirements or restrictions.

47 (i) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer,
48 and direct shipper licenses when acting in one or more of those capacities and shall pay all
49 associated license fees, unless the winery or farm winery holds a license issued pursuant to the

50 provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate
51 licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for
52 off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant;
53 and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has
54 applied, paid all fees, and met all requirements may obtain a private manufacturer club license
55 subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license
56 subject to the requirements of §11-16-1 *et seq.* of ~~the~~ this code. All wineries ~~must~~ shall use a
57 distributor to distribute and sell their wine in the state, except for farm wineries. Wineries or farm
58 wineries may enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this
59 code.

60 (j) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or
61 micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

62 (k) For purposes of this section, terms have the same meaning as provided in §8-13-7 of
63 this code.

64 (l) *Building code and tax classification.* — Notwithstanding any provision of this code to the
65 contrary, the mere addition of a winery or farm winery licensed under this article on a property does
66 not change the nature or use of the property which otherwise qualifies as agricultural use for
67 building code and property tax classification purposes.

68 (m) In the interest of promoting tourism throughout the state, every licensed winery or farm
69 winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private
70 fair and festivals, for off-premises consumption sales of only the winery or farm winery's sealed
71 wine. At least five days prior to an approved private fair and festival, an authorized winery or farm
72 winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed
73 winery or farm winery at the private fair and festival's licensed premises. If approved, an
74 authorized licensed winery or farm winery may conduct off-premises consumption sales of their
75 wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All

76 authorized and approved wineries and farm wineries' off-premises consumption sales shall
77 comply with all retail requirements in §60-8-1 et seq. of this code, and specifically with respect to
78 all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide
79 complimentary samples to patrons who are 21 years of age and older and who are not intoxicated
80 in the amounts set forth in subsection (b).

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

20 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 a
36 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~~ where the applicant or licensee desires to sell baked goods infused with
45 liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup,

46 drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out
47 of the baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet
48 containing alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine,
49 or nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. ~~This~~ The
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~~ Have at least 50 members;

54 (ii) ~~Operates~~ Operate a kitchen that produces baked goods, as specified in this
55 subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink
56 with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of
57 a 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,~~ Maintain, at any one time, a 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~~ Use 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~~ 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~~license that has a primary function of operating a cigar shop for sales of premium cigars
74 for 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~~using a private
76 caterer, for members and guests while the private club applicant or licensee is selling and serving
77 liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption.
78 Further, the applicant or licensee shall ~~meet the criteria set forth in this subdivision which:~~

79 (A) ~~Has~~ Have at least 50 members;

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

86 (C) ~~Maintains~~, Maintain, at any one time, ~~\$500~~ not less than a food inventory capable of
87 being prepared in the private club bar's kitchen or ~~has~~ have on hand at least \$150 in food provided
88 by a private caterer. In calculating the food inventory, the commissioner shall include television
89 dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-
90 packaged foods, or canned prepared foods;

91 (D) ~~Uses~~Use 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 or
94 legal guardian, that person may not be admitted as a guest; and

95 (E) ~~Meets~~Meet 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 of
110 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 and where the space safely accounts
120 for 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 and wine
139 when 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~~ a 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~~ 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~~ license, or licensed private manufacturer's club ~~licensee~~ license that has a primary
159 function of operating a food preparation business using an industrial truck, van, or trailer to
160 prepare food and meals for sale at various locations within the state while ~~utilizing~~ using a propane
161 or electric generator powered kitchen. The private food truck applicant shall obtain county or
162 municipal approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or
163 nonintoxicating craft beer sales and service, while providing a food menu for members and guests.
164 The private food truck applicant shall ~~meet the criteria set forth in this subdivision which:~~

165 (A) ~~Has~~ Have at least 10 members;

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

171 (C) ~~Maintains~~, Maintain, at any one time, ~~\$500~~ not less than \$200 of food inventory that is
172 fit for human consumption and capable of being prepared and served from the private food truck's
173 kitchen during all hours of operation;

174 (D) ~~Shall be~~ Is 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 operated, ~~and further~~

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

183 (F) ~~Requires~~ Require all nonintoxicating beer and nonintoxicating craft beer sold,
184 furnished, tendered, or served pursuant to the license created by this section to be purchased from
185 the licensed distributor where the private food truck has its home location or from a resident
186 brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this
187 code.

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

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

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

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

199 (K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor,
200 wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker
201 representatives may attend a location where a private food truck is located and discuss their

202 respective products but may not engage in the selling, furnishing, tendering, or serving of any
203 nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

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

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

209 (N) ~~Meets~~Meet and ~~is~~be subject to all other applicable private club requirements.

210 (11) "Private club restaurant" means an applicant for a private club or licensed private club
211 licensee that has a primary function of using the licensed premises as a restaurant for serving
212 freshly prepared meals and dining in the restaurant area. The private club restaurant may have a
213 bar area separate from or commingled with the restaurant, seating requirements for members and
214 guests shall be met by the restaurant area. The applicant for a private club restaurant license is an
215 applicant which:

216 (A) Has at least 100 members;

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

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

226 (D) Uses an age verification system approved by the commissioner for the purpose of
227 verifying that persons under 18 years of age who are in the bar area of a private club restaurant are

228 accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area
229 who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but
230 may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the
231 restaurant area of a private club restaurant:

232 (E) May uncork and serve members and guests up to two bottles of wine that a member
233 purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when
234 licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use
235 and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no
236 event may a member or a group of members and guests exceed two sealed bottles or containers
237 of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant
238 and for personal consumption by the member and guests. A member or guest may cork and reseal
239 any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative rules for
240 carrying unconsumed wine off the licensed premises;

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

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

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

254 (A) Has at least 100 members;

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

257 (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or
258 freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and
259 apparatus as determined by the commissioner on the licensed premises and serves freshly
260 prepared food at least 15 hours per week: Provided, That a licensee required by the provisions of
261 this code to serve food on premises in order to lawfully serve alcoholic liquors, beer, wine, or hard
262 cider may meet the requirement of having on-premises food preparation facilities by, during all
263 hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site
264 an operating food truck or other portable kitchen: Provided, however, That the approval of the
265 commissioner and the appropriate health department is required to operate as allowed by
266 subsection (a) of this section;

267 (D) Maintains, at any one time, ~~\$500 of~~ fresh food inventory capable of being prepared in
268 the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner
269 may not include television dinners, bags of chips or similar products, microwavable meals, frozen
270 meals, pre-packaged foods, or canned prepared foods;

271 (E) Owns or leases, controls, operates, and uses acreage amounting to at least one acre
272 space which is contiguous, bounded, or fenced real property sufficient to safely operate the
273 licensed premises that would be listed on the licensee's floorplan and may be used for large
274 events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

275 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
276 buildings and structures on the private manufacturer club's floorplan that would comprise the
277 licensed premises, which would be authorized for the lawful sale, service, and consumption of
278 alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the
279 licensed premises, whether these activities were conducted in a building or structure or outdoors

280 while on the private manufacturer club's licensed premises, and as noted on the private
281 manufacturer club's floorplan;

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

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

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

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

290 (A) Has at least 100 members;

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

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

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

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

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

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

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

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

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

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

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

315 (D) Maintains, at any one time, ~~\$2,500 of~~ fresh food inventory capable of being prepared in
316 the private hotel's full kitchen. ~~And in~~ In calculating the food inventory, the commissioner may not
317 include microwavable, frozen, or canned foods;

318 (E) Owns or leases, controls, operates, and uses acreage amounting to more than one
319 acre but fewer than three acres, which are contiguous acres of bounded or fenced real property
320 which would be listed on the licensee's floorplan and would be used for hotel and conferences and
321 large contracted-for group-type events such as weddings, reunions, conferences, meetings, and
322 sporting or recreational events;

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

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

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

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

333 (J) May provide members and guests who are verified by proper form of identification to be
334 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their
335 rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6
336 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and
337 liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination
338 of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or
339 nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not
340 exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml,
341 with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of
342 canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the
343 sale of nonintoxicating beer, nonintoxicating craft beer, wine, ~~and liquor~~, and hard cider. All
344 nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the
345 licensed distributor in the area where licensed. All wine or hard cider available for sale shall be
346 purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale
347 shall be purchased from the licensed retail liquor outlet in the market zone of the licensed
348 premises. The mini-bar shall be checked daily and replenished as needed to benefit the member
349 and guest.

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

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

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

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

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

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

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

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

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

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

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

378 (K) May provide members and guests who are verified by proper form of identification to be
379 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented
380 short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic
381 feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold
382 from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid
383 ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating

384 craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half
385 liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with
386 any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination
387 of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on
388 the sale of nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor. All
389 nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the
390 licensed distributor in the area where licensed. All wine or hard cider available for sale shall be
391 purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale
392 shall be purchased from the licensed retail liquor outlet in the market zone of the licensed
393 premises. The mini-bar shall be checked daily and replenished as needed to benefit the member
394 and guest.

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

397 (A) Has at least 100 members;

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

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

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

406 (E) Lists the entire property from paragraph (D) of this subsection and all adjoining
407 buildings and structures on the private golf club's floorplan comprising the licensed premises,
408 which would be authorized for the lawful sales, service, and consumption of alcoholic liquors
409 throughout the licensed premises whether these activities were conducted in a building or

410 structure or outdoors while on the private golf club's licensed premises;

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

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

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

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

417 (A) Has at least 50 members;

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

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

422 (D) Owns or leases, controls, operates, and uses acreage amounting to at least 30
423 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole
424 golf course's floorplan and could be used for golfing events and large contracted for group-type
425 events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

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

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

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

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

435 (18) "Private tennis club" means an applicant for a private club or licensed private club

436 licensee which:

437 (A) Has at least 100 members;

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

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

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

446 (E) Lists the entire property from paragraph (D) of this subdivision and all adjoining
447 buildings and structures on the private tennis club's floorplan comprising the licensed premises,
448 which would be authorized for the lawful sales, service, and consumption of alcoholic liquors
449 throughout the licensed premises whether these activities were conducted in a building or
450 structure or outdoors while on the private tennis club's licensed premises;

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

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

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

456 (19) "Private college sports stadium" means an applicant for a private club or licensed
457 private club licensee that operates a college or university stadium or coliseum for Division I, II, or III
458 and what involves a college public or private or university that is a member of the National
459 Collegiate Athletic Association, or its successor, and uses the facility for football, basketball,
460 baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences,
461 meetings, or other special events and does not maintain daily or regular operating hours as a bar

462 or restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-
463 collegiate sporting events. This license may be issued in the name of the National Collegiate
464 Athletic Association Division I, II, or III college or university or the name of the primary food and
465 beverage vendor under contract with that college or university. All alcohol sales shall take place
466 within the confines of the college or university stadium: *Provided*, That any outside area approved
467 for alcohol sales shall be surrounded by a fence or other barrier prohibiting entry except upon the
468 college or university's express permission, and under the conditions and restrictions established
469 by the college or university, so that the alcohol sales area is closed in order to prevent entry and
470 access by the general public. Further the applicant shall:

471 (A) Have at least 100 members;

472 (B) Maintain an open-air or ~~closed-air~~ enclosed stadium or coliseum venue primarily used
473 for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III
474 sports, and also weddings, reunions, conferences, meetings, or other events where parties shall
475 reserve the college stadium venue in advance of the event;

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

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

485 (E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings
486 and structures on the private college sports stadium's floorplan which would comprise the licensed
487 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic

488 liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises
489 whether these activities were conducted in a building or structure or outdoors while on the private
490 college sports stadium's licensed premises and as noted on the private college sports stadium's
491 floorplan;

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

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

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

496 (20) "Private professional sports stadium" means an applicant for a private club or licensed
497 private club licensee that is only open for professional sporting events when the events are
498 affiliated with or sponsored by a professional sporting association, reserved weddings, reunions,
499 conferences, meetings, or other special events and does not maintain daily or regular operating
500 hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or
501 hosting non-professional sporting events, and further the applicant shall:

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

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

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

511 (D) Own or lease, control, operate, and use acreage amounting to at least three contiguous
512 acres of bounded or fenced real property, as determined by the commissioner, which would be
513 listed on the professional sports stadium's floorplan and could be used for contracted- for

514 professional sporting events, group-type weddings, reunions, conferences, meetings, or other
515 events;

516 (E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings
517 and structures on the private professional sports stadium's floorplan comprising the licensed
518 premises, ~~and~~ which would be authorized for the lawful sales, service, and consumption of
519 alcoholic liquors throughout the licensed premises whether these activities were conducted in a
520 building or structure or outdoors while on the private professional sports stadium's licensed
521 premises;

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

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

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

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

539 (A) Have at least 100 members;

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

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

549 (D) Have an association that owns or leases, controls, operates, and uses acreage
550 amounting to more than one acre, which is contiguous acreage of bounded or fenced real property
551 which would be listed on the licensee's floorplan and would be used for large contracted-for
552 reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences,
553 meetings, or other special events;

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

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

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

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

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

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

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

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

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

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

581 (A) Has at least 25 members;

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

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

592 (D) Owns or leases, controls, operates, and uses ~~acreage amounting to at least two~~
593 ~~contiguous acres of bounded or fenced real property~~ space sufficient to safely operate the
594 licensed premises. The applicant or licensee shall verify that, the property is not less than two
595 acres and is remotely located, subject to the commissioner's approval. The bounded or fenced
596 real property may be listed on the private wedding venue's floorplan and may be used for large
597 events such as weddings, reunions, conferences, meetings, or other events;

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

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

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

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

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

610 (A) Has at least 100 members;

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

615 (C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as
616 determined by the commissioner, on the licensed premises ~~and~~ which is capable of serving freshly
617 prepared food, or meals to serve its stated members, guests, and patrons who will be attending

618 the event at the private multi-sport complex. A licensee may contract with temporary food vendors
619 or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex
620 not readily accessible by the main facility;

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

625 (E) Owns or leases, controls, operates, and uses acreage amounting to at least 50
626 contiguous acres of bounded or fenced real property, as determined by the commissioner, which
627 would be listed on the private multi-sport complex's floorplan and could be used for contracted-for
628 sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other
629 events;

630 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
631 buildings and structures on the private multi-sport complex's floorplan which would comprise the
632 licensed premises, which would be authorized for the lawful sales, service, and consumption of
633 alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, and hard cider throughout the
634 licensed premises whether these activities were conducted in a building or structure or outdoors
635 while on the private multi-sport complex's licensed premises and as noted on the private multi-
636 sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or
637 nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also
638 operated by the licensee when the golf cart or food truck is located on the private multi-sport
639 complex's licensed premises;

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

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

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

644 (24) "Private coliseum or center" means an applicant for a private club or licensed private
645 club licensee that is open for various events including, but not limited to, musical concerts, bands,
646 sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events,
647 tradeshows, health events, reserved weddings, reunions, retreats, conventions, conferences,
648 meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer
649 or wine when conducting or hosting events focused on patrons who are less than 21 years of age,
650 and further the applicant shall:

651 (A) Have at least 5,000 members;

652 (B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of
653 event space primarily used for events as noted above, where parties reserve the coliseum or
654 center venue in advance of the event;

655 (C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner,
656 on the licensed premises and be capable of serving freshly prepared food or meals to its stated
657 members, guests, and patrons who will be attending events at the private coliseum or center;

658 (D) Own or lease, control, operate, and use acreage amounting to at least two contiguous
659 acres of bounded or fenced real property, as determined by the commissioner, which would be
660 listed on the private coliseum or center's floorplan and could be used for contracted-for events, as
661 noted above, or a private fair and festival, as authorized by the commissioner per dual licensing
662 requirements as set forth in §60-7-2a of this code;

663 (E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings
664 and structures on the private coliseum or center's floorplan comprising the licensed premises
665 which would be authorized for the lawful sales, service, and consumption of alcoholic liquors
666 throughout the licensed premises whether these activities were conducted in a building or
667 structure or outdoors while on private coliseum or center's licensed premises;

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

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

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

672 (25) "Private food court" means an applicant who qualifies for a private club restaurant or
673 licensed private club restaurant licensee that operates in a facility within a licensed premises with
674 one licensed floorplan that includes an association of other inter-connected licensed private club
675 restaurants or unlicensed restaurants that operate legally without alcohol sales, where all
676 businesses that are licensed members of the association have agreed in writing to be liable and
677 responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and
678 nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the
679 private food court, and further the applicant shall:

680 (A) Have at least 100 members;

681 (B) Have at least one member of its association who qualifies for a private club restaurant
682 containing a full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some
683 combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined
684 by the commissioner on the licensed premises and be capable of serving freshly prepared food at
685 least 15 hours per week in the private food court;

686 (C) Have at least one member of its association who qualifies for a private club restaurant
687 who maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the
688 private club restaurant's full kitchen, and in calculating the food inventory the commissioner may
689 not include television dinners, bags of chips or similar products, microwavable meals, frozen
690 meals, pre-packaged foods, or canned prepared foods;

691 (D) Have an association that owns or leases, controls, operates, and uses a facility that
692 meets requirements of this article, and the entire facility is listed on the licensee's floorplan as its
693 licensed premises;

694 (E) Have an association that lists in the application for licensure the entire facility and any
695 inter-connected and adjoining structures on the private food court's floorplan which would

696 compromise the licensed premises, and which would be authorized for the lawful sales, service,
697 and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer
698 throughout the licensed premises whether these activities were conducted in a building or
699 structure while on the private food court's licensed premises and as noted on the private food
700 court's licensed floorplan;

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

703 (G) Have at least one separate and unrelated business applying for the license and
704 certifying that all licensed businesses in the association have agreed to the liability responsibility
705 associated with a private food court license;

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

708 (I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated
709 members and guests who will be attending the private food court;

710 (J) Provide a copy of a written agreement between all the vendors of the association that is
711 executed by all businesses stating that each licensed vendor is jointly and severally liable for any
712 violations of this chapter committed on the licensed premises;

713 (K) Provide a security plan indicating all businesses who will be selling and serving
714 alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer, list non-licensees who will
715 be selling and serving food, list all entrances, and list all exits, provide a plan to verify the ages of
716 members, patrons, and guests, a plan to verify whether a member, patron, or guest is intoxicated,
717 and a plan to provide for the public health and safety of members, patrons, and guests;

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

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

720 The Department of Natural Resources, the authority governing any county or municipal
721 park, or any county commission, municipality, other governmental entity, public corporation, or

722 public authority operating any park or airport may lease, as lessor, a building or portion thereof or
723 other limited premises in any park or airport to any corporation or unincorporated association for
724 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~~ A private
2 coliseum or center may permit a private fair and festival licensee to conduct the temporary special
3 event, authorized by that license, within, or on the private coliseum or center licensee's licensed
4 premises in order to and hold additional licenses for the purpose of holding events, such as fairs
5 and festivals, and creating create tourism opportunities that will show case businesses promote
6 brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-
7 distilleries in this state.

8 (b) A private coliseum or center licensee may host an a special event for a private fair and
9 festival licensee on the licensee's licensed premises if the licensee is both licensees are in good
10 standing with the commissioner and the licensee submits submit to the commissioner its the
11 temporary floorplan revisions of the licensed venue private coliseum or center in which the special
12 event would be held to comprise the special event's lawful premises, which shall only include
13 spaces in buildings or rooms of the private coliseum or center's licensed premises. By contractual
14 agreement between the private coliseum or center licensee and the private fair and festival
15 licensee, the parties shall agree where the licensee has control of the space that the private
16 coliseum or center maintains control of its licensed premises, but for the a set contracted rental
17 time period, where the space The private fair and festival licensee shall safely accounts account
18 for the ingress and egress of the stated members and guests who will be attending the special
19 event at the licensed premises. During the contracted rental time period, the private fair and
20 festival licensee is wholly responsible and liable for the proper sale and serving of alcoholic liquors
21 and nonintoxicating beer in the area designated as the private fair and festival's temporary

22 floorplan, as set forth in this section. The ~~venue's private fair and festival's temporary~~ floorplan
23 ~~during the set time period as stated in the contract~~ shall comprise the private fair and festival's
24 licensed premises for the temporary special event, which is authorized for the lawful sale, service,
25 and consumption of alcoholic liquors and nonintoxicating beer ~~and nonintoxicating craft beer,~~ and
26 ~~wine~~ throughout the private fair and festival's licensed premises during this dually licensed
27 temporary special event: *Provided*, That the venue private fair and festival's licensed premises
28 dually shared and licensed with the private coliseum or center shall:

29 (1) Have facilities to prepare and serve food and alcohol;
30 (2) Have adequate restrooms and ~~(3)~~ sufficient building facilities for the expected number
31 of members and guests ~~expected to attend~~ attending the event;

32 (3) Comply with all other requirements of its license in this article; and

33 ~~(3)(4) otherwise be in compliance~~ Comply with health, fire, safety, and zoning
34 requirements.

35 (c) ~~A licensee defined in §60-7-2 of this code may not be limited or restricted in any way as~~
36 ~~to the number of events that may be held on the premises so long as the licensee continues to~~
37 ~~operate its primary business in good standing with the Commissioner~~ There is no limit on the
38 number of private fair and festivals that may be held at a private coliseum or center.

§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, a private food court as defined in §60-7-2 of this code or private resort
7 hotel to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the private club
8 is a private bakery; \$1,500 if the private club is a private wedding venue or barn or a private cigar

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

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

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

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

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

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

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

45 (3) License fees for the license period beginning July 1, 2023, and beyond, shall be as set
46 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~~ continued a special license designated Class S2 private fair
2 and festival license for the retail sale of ~~liquor, wine~~ alcoholic liquors and nonintoxicating beer, and
3 nonintoxicating craft beer for on-premises consumption.

4 (b) To be eligible for the license authorized by subsection (a) of this section, the private fair
5 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~~ Make application with the ~~commission~~ commissioner at least 15 days
9 ~~pursuant~~ prior to the private fair, festival, or other event;

10 (3) Pay a nonrefundable non-prorated 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 than 10
13 consecutive days.

14 (d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served
15 for on-premises consumption by the private fair and festival pursuant to the license created by this
16 section ~~must~~ shall be purchased from ~~the licensed distributor~~ distributors that services the area in
17 which the private fair and festival is held or from a resident brewer acting in a limited capacity as a
18 distributor, all in accordance with §11-16-1 *et seq.* of this code. ~~Sales of sSealed~~ containers of
19 nonintoxicating beer or nonintoxicating craft beer may be sold for off-premises consumption if the
20 nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or
21 resident brewer, as set forth in §11-16-6a(d) of this code, who manufactures the nonintoxicating
22 beer or nonintoxicating craft beer in this state. ~~are purchased from the licensed distributor that~~
23 ~~services the area in which the private fair, festival, or other event is being held and such licensed~~
24 ~~distributor~~ The off-premises consumption sales shall be made pursuant to a written agreement
25 between the private fair and festival and an authorized brewer or resident brewer. Prior to the start
26 of the private fair or festival, an authorized brewer or resident brewer who agrees to offer such off-
27 premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer from a
28 booth or other facility on the private fair and festival's licensed premises prior to the start of the
29 private fair and festival must meet the requirements of §11-16-6a(d) of this code. ~~s, or other event~~
30 The written agreement with each authorized brewer or resident brewer shall account for lawful
31 sales of nonintoxicating beer and nonintoxicating craft beer sold for off-premises consumption as
32 set forth in §11-16-1 et seq. of this code. The authorized and approved brewer, resident brewer, or
33 its licensed representatives may give or sell approved promotional items to private fair and festival
34 members and guests, but not to the private fair and festival's volunteers, independent contractors,
35 or employees.

36 (e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by
37 the private fair and festival pursuant to the license created by this section shall be purchased from
38 a licensed wine or hard cider distributor, ~~winery,~~ or farm winery in accordance with §60-8-1 *et seq.*
39 of this code and §60-8A-1 et seq. of this code, as applicable. ~~Sales of sSealed~~ containers of wine
40 or hard cider may be sold for off-premises consumption if the wine or hard cider is ~~purchased from~~
41 a licensed distributor is being sold by an authorized winery or farm winery, as set forth in §60-4-
42 3b(m) and §60-8A-5(c) of this code, who manufactures that wine or hard cider in this state. The off-
43 premises consumption sales shall be made pursuant to a written agreement between the private
44 fair and festival and an authorized winery or farm winery. ~~and the licensed distributor, winery, or~~
45 ~~farm winery~~ An authorized winery or farm winery who agrees to offer their wine or hard cider for off-
46 premises consumption sales from a booth or other facility on the private fair and festival's licensed
47 premises prior to the start of the private fair or festival or other event shall meet the requirements of
48 §60-4-3b(m) and §60-8A-5(c) of this code, as applicable. The written agreement with each
49 authorized winery or farm winery shall account for lawful sales of wine or hard cider sold for off-
50 premises consumption as set forth in §60-8-1 et seq. of this code and §60-8A-1 et seq. of this
51 code, as applicable. The authorized and approved winery, farm winery or its licensed
52 representatives may give or sell approved promotional items to private fair and festival members
53 and guests, but not to the private fair and festival's volunteers, independent contractors, or
54 employees.

55 (f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private
56 fair and festival pursuant to the license created by this section shall be purchased from a licensed
57 retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is
58 occurring, all in accordance with §60-3A-1 *et seq.* of this code. ~~Sales of sSealed~~ containers of
59 liquor may be sold for off-premises consumption if the liquor is ~~purchased~~ being sold by an
60 authorized distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who
61 manufactures their liquor in this state. Off-premises consumption sales shall comply with §60-3A-

62 17 of this code and §60-4-3a(c) of this code shall not apply to these sales. The off-premises
63 consumption sales shall be made pursuant to a written agreement between the private fair and
64 festival and an authorized distillery, mini-distillery, or micro-distillery, from the licensed retail liquor
65 outlet in the market zone or contiguous market zone where the private fair, festival, or other event
66 is occurring and the licensed retail liquor outlet An authorized licensed distillery, mini-distillery, or
67 micro-distillery who agrees to offer such off-premises consumption sales of their manufactured
68 liquor from a booth or other facility on the private fair and festival's licensed premises prior to the
69 start of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a
70 of this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery
71 shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 of
72 this code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed
73 representatives may give or sell approved promotional items to private fair and festival members
74 and guests, but not to the private fair and festival's volunteers, independent contractors, or
75 employees.

76 (g) A licensee authorized by this section may ~~utilize~~ use bona fide employees, or
77 volunteers or in limited circumstances licensed representatives to sell, furnish, tender, or serve the
78 nonintoxicating beer, nonintoxicating craft beer, wine, ~~or~~ liquor, or hard cider.

79 (h) Licensed representatives of a an authorized and approved brewer, resident brewer,
80 beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-
81 distillery, and liquor broker representatives may attend a private fair and festival and discuss their
82 respective products but shall not engage in the selling, furnishing, tendering, or serving of any
83 nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed
84 representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-
85 distillery that has agreed in writing to conduct sampling and off-premises consumption sales of
86 their respective licensee's products at the private fair and festival, may discuss their respective
87 products and engage in the limited giving of complimentary samples in accordance with §11-16-6a

88 (c) and (d), §60-4-3a (a) and (b), and §60-4-3b (b) and (m) of this code; and the selling of sealed
89 bottles or cans of their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider,
90 or liquor products for off-premises consumption. All taxes and fees must be paid on lawful sales.

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

99 ~~(j) During events authorized by this section, licensees may also sell promotional and other~~
100 ~~items relating to promoting their business and its products~~ Dual licensing is permitted for private
101 fairs and festivals pursuant to §60-7-2a of this code.

102 (k) A private fair and festival licensee who executes a written agreement with a licensed
103 brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or their
104 licensed representatives is jointly liable and responsible for any violations of this article.

105 (l) A private fair and festival licensee who executes a written agreement with a licensed
106 brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct
107 limited off-premises consumption sales shall not have any pecuniary interest, share, or
108 percentage in any sales of sealed nonintoxicating beer, nonintoxicating craft beer, wine, hard
109 cider, or liquor.

110 (m) A private fair and festival licensee who executes a written agreement with a licensed
111 brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct
112 limited off-premises consumption sales may charge them a flat booth rental fee.

113 (n) A private fair and festival licensee, licensed brewer, resident brewer, winery, farm
114 winery, distillery, mini-distillery, micro-distillery, or their licensed representatives who permits
115 members or guests to consume, on the private fair and festival's licensed premises, any
116 nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor, that was purchased as
117 an off-premises consumption sale, shall have their respective license immediately suspended,
118 and that conduct is grounds for revocation of their license.

§60-7-8g. Special permit for a qualified permit holders in a private outdoor designated area;
license fee and application; license subject to provisions of article.

1 (a) There is hereby created a special permit designated Class S4 for a qualified permit
2 holder operating in a private outdoor designated area approved by a municipality as set forth in §8-
3 12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating
4 craft beer for on-premises consumption at a certain public property designated as a private
5 outdoor designated area where multiple private club license type licensees who apply and obtain a
6 qualified permit holder permit shall share liability and responsibility. Each qualified permit holder
7 may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as
8 provided in this section.

9 (b) Definitions:

10 (1) "Private outdoor designated area" means public property that has become a legally
11 demarcated area established by a municipal ordinance as set forth in §8-12-26 of this code for the
12 consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

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

15 (c) To be eligible for the license authorized by subsection (a) of this section, the qualified
16 permit holder shall:

17 (1) Operate in a private outdoor designated area created by municipal ordinance as set
18 forth in §8-12-26 of this code, and provide the commissioner a copy of the certified ordinance from

19 the municipality;

20 (2) Apply to the commissioner for the special permit prior to operating in an approved
21 private outdoor designated area on an application provided by the commissioner;

22 (3) Pay a nonrefundable non-prorated annual license fee of \$100 to the commissioner;

23 (4) Be in compliance with all state and federal laws and be in good standing with the
24 commissioner;

25 (5) Be approved by the municipality to operate in the private outdoor designated area;

26 (6) Provide the days and hours of operation in the private designated area which cannot
27 exceed the stated private club hours of operation;

28 (7) Provide, in conjunction with the municipality, adequate restroom facilities, whether
29 permanent or portable, to serve the members and guests who will be attending the private outdoor
30 designated area;

31 (8) Provide an executed agreement between all qualified permit holders stating that each
32 qualified permit holder is jointly and severally liable for any improper acts or conduct committed in
33 the operation of the private outdoor designated area in conjunction with operation of their Class A
34 license;

35 (9) Provide a security plan for the private outdoor designated area indicating: All qualified
36 permit holders' licensed premises where alcohol will be served in approved non-glass containers;
37 all entrances and exits in order to verify members', patrons', and guests' ages, and to assess
38 whether a member, patron, or guest is under 21 years of age or intoxicated; and a plan to provide
39 for the public health and safety of members, patrons, and guests;

40 (10) Provide a floorplan for the private outdoor designated area indicating a legally
41 demarcated area that is bounded or utilizes signage to safely account for the ingress and egress of
42 members, patrons, and guests who will be within the private outdoor designated area and also be
43 permitted to carry liquor, wine, nonintoxicating beer, and nonintoxicating craft beer on and off of

44 the qualified permit holders' licensed premises and within the private outdoor designated area
45 when contained in an approved non-glass container. The private outdoor designated area's
46 floorplan does comprise a separate licensed premises authorized only for the lawful consumption
47 of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed
48 premises when lawfully purchased from a qualified permit holder;

49 (11) Meet and be subject to all other private club license type requirements;

50 (12) Provide a plan to prevent members, guests, and patrons from bringing, consuming, or
51 selling alcohol not in an approved non-glass container in the private outdoor designated area; and

52 (13) Use an age verification system approved by the commissioner.

53 (c) As set forth in §8-12-26 of this code a municipality may, by ordinance, establish a
54 private outdoor designated area where the municipality may zone, set requirements and establish
55 conditions for safe operation of private outdoor designated area by qualified permit holders.

56 (d) A municipality shall be responsible for the enforcement of any criminal violations
57 occurring in a private outdoor designated area and shall report such violations to commissioner for
58 a determination of any violation of §11-16-1 et seq. and chapter 60 of this code.

59 (e) The commissioner shall enforce any violations of §11-16-1 et seq. and chapter 60 of
60 this code committed by qualified permit holders against their permit and their Class A license.

61 (f) A qualified permit holder that is separately authorized for an outdoor dining area or
62 sidewalk dining area may continue to operate those areas in conjunction with the private outdoor
63 designated area subject to the commissioner's requirements.

64 (g) A licensee permitted under this section is subject to all other provisions of this article
65 and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or
66 order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as
67 required by the circumstances of for the operation of qualified permit holders in each private
68 outdoor designated area. The commissioner may revoke or suspend immediately any permit

69 issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code:
 70 Provided, however, That under no circumstances may the provisions of §60-7-12 of this code be
 71 waived or an exception granted with respect thereto.

ARTICLE 8. SALE OF WINES.

§60-8-6g. Special privilege of Class A private wine restaurant licensee to operate separate, but connected, Class B wine specialty shop license.

1 A Class A private wine restaurant licensee may, in the commissioner's discretion, operate
 2 Class B wine specialty shop license for the off-premises sale of nonintoxicating beer and wine in a
 3 connected but separately operated area of the Class A private wine restaurant is licensed
 4 premises: Provided, That each business is licensed separately and operates separate cash
 5 registers and maintains separation barriers between the different licensed operations. A licensee
 6 who fails to license two inner-connected businesses subjects the licensee to the penalties under
 7 this article.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

1 (a) *Sales of hard cider.* — A licensed winery or farm winery with its principal place of
 2 business or manufacturing facility located in the State of West Virginia may offer hard cider
 3 manufactured by the licensed winery or farm winery for retail sale to customers from the winery's
 4 or farm winery's licensed premises for consumption off of the licensed premises only in approved
 5 and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal
 6 consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard
 7 cider for consumption on the premises of the principal place of business or manufacturing facility
 8 located in the State of West Virginia, except for the limited purpose of complimentary samples as
 9 permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g)

10 of this code.

11 (b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of
12 business or manufacturing facility located in the State of West Virginia may offer complimentary
13 samples of hard cider manufactured at the winery’s or farm winery’s principal place of business or
14 manufacturing facility located in the State of West Virginia. The complimentary samples may be no
15 greater than two fluid ounces per sample per patron, and a sampling shall not exceed six
16 complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery
17 providing complimentary samples shall provide complimentary food items to the patron
18 consuming the complimentary samples; and prior to any sampling, verify, using proper
19 identification, that the patron sampling is 21 years of age or older and that the patron is not
20 noticeably or visibly intoxicated.

21 (c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply
22 with all the provisions applicable to wine retailers when conducting sales of hard cider and is
23 subject to all applicable requirements and penalties. In the interest of promoting tourism
24 throughout the state, every licensed winery or farm winery manufacturing cider in this state is
25 authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises
26 consumption sales of only the winery or farm winery’s sealed hard cider. At least five days prior to
27 an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a
28 written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the
29 private fair and festival’s licensed premises. If approved, an authorized winery or farm winery may
30 conduct off-premises consumption sales of their hard cider from a designated booth at the private
31 fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and
32 farm wineries’ off-premises consumption sales of hard cider shall comply with all retail
33 requirements in §60-8-1 et seq. of this code and §60-8A-1 et seq. of this code, and specifically with
34 respect to all markups, taxes, and fees.

35 (d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall
36 pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees
37 required, and meet applicable licensing provisions as required by law and by rule of the
38 commissioner.

39 (e) *Advertising.* — A licensed winery or farm winery may advertise a particular brand or
40 brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider
41 subject to state and federal requirements or restrictions. The advertisement may not encourage
42 intemperance or target minors.

43 (f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler filling
44 services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-
45 8-6c of this code.

46 (g) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under
47 §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider
48 in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license
49 fee is \$50.

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 by a
6 fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private
7 bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club,

8 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 §60-7-2(24)(H), §60-7-2(25)(H), §60-7-8c(b)(14), §60-7-8d, §60-7-8g(c)(15), and §60-8-32a of
17 this code; or (b) a private club with more than 1,000 members that is in good standing with the
18 Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage
19 Control Commissioner; and which has designated certain seating areas on its licensed premises
20 as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by
21 using a mandatory carding or identification program by which all members or guests being served
22 or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required
23 to provide their proper identification to verify their identity and further that they are of legal drinking
24 age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer
25 or nonintoxicating craft beer.