

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 534**

By Senators Trump, Takubo, and Maroney

[Introduced January 31, 2023; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §11-16-3, §11-16-6a, §11-16-8, and §11-16-9 of the Code of West  
2 Virginia, 1931, as amended; to amend and reenact §60-3A-8 of said code; to amend and  
3 reenact §60-4-3a, §60-4-3b, and §60-4-23 of said code; to amend and reenact §60-7-2 of  
4 said code; to amend said code by adding thereto three new sections, designated §60-7-2a,  
5 §60-7-6, and §60-7-8a; to amend said code by adding thereto a new section, designated  
6 §60-8-6g; and to amend and reenact §60-8A-5 of said code, all relating to nonintoxicating  
7 beer, nonintoxicating craft beer, cider, wine, and liquor license requirements; to promote  
8 tourism in the state by permitting authorized brewers, resident brewers, wineries, farm  
9 wineries, distilleries, mini-distilleries, and micro-distilleries a limited off-site retail privilege  
10 at private fair and festivals for off-premises consumption sales for nonintoxicating beer,  
11 nonintoxicating craft beer, cider, wine, and liquor manufactured by the brewers, resident  
12 brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries,  
13 requirements, requiring payment of taxes, fees and markups, and no license fee; clarifying  
14 the nonintoxicating beer growler requirements for contents and sealing; clarifying brewer  
15 and resident brewer place of manufacture requirements for additional places of  
16 manufacture based on manufacturing volume capacity; clarifying nonintoxicating beer  
17 license requirements for persons, trusts and fairs and festivals; clarifying retail liquor outlet  
18 license requirements for applicants; clarifying distilleries, mini-distilleries, and micro-  
19 distilleries requirements for fairs and festivals; clarifying that the statute applying to  
20 distilleries and mini-distilleries also applies to micro-distilleries; clarifying that exotic  
21 entertainment facility applicants and licensees are licensed as various private club license  
22 types and are charged the same private club license type license fee; clarifying exotic  
23 entertainment, licensure, and definitions; permitting dually licensed events, and a license  
24 fee; creating a private coliseum or center license, requirements, definition, use for dual  
25 licensing, and fee; clarifying dual licensing requirements and authorization for private fair  
26 and festivals, requirements, and no license fee; permitting private fairs and festivals to

27           conduct on-premises consumption sales with certain requirements; permitting private fairs  
 28           and festivals to allow authorized brewers, resident brewers, wineries, farm wineries,  
 29           distilleries, mini-distilleries, and micro-distilleries to conduct limited off-premises  
 30           consumption retail sales with certain requirements from the private fair and festival's  
 31           licensed premises; amending the private fair and festival license and revising the license  
 32           fee; and permitting a private wine restaurant to operate a separately licensed but  
 33           connected wine specialty shop.

*Be it enacted by the Legislature of West Virginia:*

## **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, a  
 14          portion of which premises is designated for retail sales of nonintoxicating beer or nonintoxicating

15 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 chapter 60 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 chapter 60 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 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 of the brewer's  
35 nonintoxicating beer products, brands, or family of brands imported and offered for sale in West  
36 Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the  
37 brewer's assigned territory for the distributor. All brands and line extensions being imported or  
38 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a  
39 written amendment to the franchise agreement. A franchise agreement may be amended by  
40 mutual written agreement of the parties as approved by the commissioner with identical terms and

41 conditions for a brewer and all of its distributors. Any approved amendment to the franchise  
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually  
43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided  
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has  
45 reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may  
46 appoint a successor distributor who accedes to all the rights of the cancelled or terminated  
47 distributor.

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

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

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other  
60 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and  
61 must be capable of being securely sealed. The growler is utilized by an authorized licensee for  
62 purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for  
63 personal consumption not on a licensed premise and not for resale. The nonintoxicating beer or  
64 nonintoxicating craft beer served and sold in a sealed growler may include ice or water mixed with  
65 the nonintoxicating beer or nonintoxicating craft beer to create a frozen nonintoxicating beer or  
66 nonintoxicating craft beer beverage. Any frozen nonintoxicating beer or nonintoxicating craft beer

67 beverage machine used for filling growlers shall be sanitized daily and shall be under the control of  
68 the licensee in the secure area, and served to the patron by the licensee from the secure area.  
69 Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not  
70 an open container under federal, state, and local law. A growler with a broken seal is an open  
71 container under federal, state, and local law unless it is located in an area of the motor vehicle  
72 physically separated from the passenger compartment. The secure sealing of a growler requires  
73 the use of a ~~tamper-resistant~~ tamper-evident seal, security tape, or other material, as approved by  
74 the commissioner, placed on or over the growler's opening, which seal, security tape or other  
75 material is clearly marked with the date of the secure sealing by the authorized licensee who is  
76 selling the growler.

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

85 (13) "Manager" means an individual who is the applicant's or licensee's on-premises  
86 employee, member, partner, shareholder, director, or officer who meets the licensure  
87 requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively  
88 manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full  
89 and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties  
90 include but are not limited to: Coordinating staffing; reviewing and approving payroll; ordering and  
91 paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing  
92 security staff, security systems, video and other security equipment; and any further acts or

93 actions involved in managing the affairs of the business, on behalf of owners, partners, members,  
94 shareholders, officers, or directors.

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

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

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

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

117 (18) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation  
118 of barley, malt, hops, or any other similar product or substitute and containing not less than one

119 half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent  
120 alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

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

124 (20) "Person" means and includes an individual, firm, trust, partnership, limited  
125 partnership, limited liability company, association, or corporation. Any trust listed on a license  
126 application or that is an owner of a licensee, must list the trustee or other persons in active control  
127 of the activities of the trust relating to the license, and is liable for acts of the trust or its  
128 beneficiaries relating to the license that are unlawful acts or violations of §11-16-1 et seq. of this  
129 code notwithstanding the liability of trustees in §44D-10-1 et seq. of this code. A trust must further  
130 provide a true and correct written and executed copy of the trust instrument to the commissioner  
131 for his or her review. The trust instrument is confidential, not a public record and not available for  
132 release pursuant to the West Virginia Freedom of Information Act set forth in §29B-1-1 et seq. of  
133 this code.

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

135 (22) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or  
136 nonintoxicating craft beer whose principal place of business and manufacture is located in the  
137 State of West Virginia; which may also have multiple manufacturing locations located in West  
138 Virginia as set forth in §11-16-9 of the code; and which does not brew or manufacture more than  
139 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually at all manufacturing  
140 locations, and does not self-distribute more than 10,000 barrels thereof in the State of West  
141 Virginia annually from all manufacturing locations.

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



145 (24) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the  
146 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 brewer's  
37 sealed nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an approved  
38 private fair and festival, an authorized brewer or resident brewer must provide a copy of a written  
39 agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured by the  
40 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 (e) Payment of taxes and fees. — A licensed brewer or resident brewer under this section  
47 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any  
48 other taxes and fees required, and meet applicable licensing provisions as required by this chapter

49 and by rule of the commissioner.

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

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

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

72 (i) Growler sanitation. — A licensed brewer or resident brewer authorized under this  
73 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and  
74 county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer

75 shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe  
 76 lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply  
 77 with this subsection may result in penalties under §11-16-23 of this code.

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

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

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

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

30 (2) The place of birth of the applicant, that he or she is a citizen of the United States and 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; not within 200 feet of a school or church measured from front door to front door, along the  
48 street or streets. This requirement does not apply to a Class B license or to a place occupied by a  
49 beer licensee so long as it is continuously so occupied. The prohibition does not apply to a college,  
50 university, or church that has notified the commissioner, in writing, that it has no objection to the  
51 location of a proposed business in a place or building within 200 feet of the college, university, or  
52 church;

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

57 (7) That the applicant is the only person in any manner pecuniarily interested in the  
58 business to be licensed and that no other person is in any manner pecuniarily interested during 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 not been convicted of a  
79 felony in the previous five years before application, has not been convicted of a crime involving  
80 fraud, dishonesty or deceit in the previous five years before application, has not been convicted of  
81 a felony for violating any alcohol-related distribution laws; having made no false statements or  
82 material misrepresentations; involving no hidden ownership; and having no persons with an  
83 undisclosed pecuniary interest contained in the application; and if there are no other omissions or  
84 failures by the applicant to complete the application, as determined by the commissioner, the  
85 commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or  
86 nonintoxicating craft beer.

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

89 (1) That the applicant or manager has, within the previous five years before application, (A)  
90 been convicted of a felony within the previous five years, (B) been convicted of a crime involving  
91 fraud, dishonesty, or deceit, or (C) been convicted of a felony for violating any state or federal  
92 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 in original containers that are no larger  
37 in size than one-half barrel for off-premises consumption.

38 The Commissioner may only issue a Class B license to the proprietor or owner of a grocery  
39 store. For the purpose of this article, the term "grocery store" means any retail establishment  
40 commonly known as a grocery store or delicatessen, and caterer or party supply store, where food  
41 or food products are sold for consumption off the premises, and includes a separate and  
42 segregated portion of any other retail store which is dedicated solely to the sale of food, food  
43 products, and supplies for the table for consumption off the premises. Caterers or party supply  
44 stores shall purchase the appropriate 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 for each place of manufacture, and no more than two places of  
55 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 three 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 per paragraph (A) or (B) will receive one license  
62 for use at all places of manufacture; each place of manufacture shall meet all licensing  
63 requirements in this article and the rules; and all places of manufacture shall be noted on the one  
64 brewer or resident brewer license in compliance with §11-16-5 and §11-16-6a(k) of this code.

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

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

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

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

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

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

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

99 (h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good  
100 standing with the commissioner, may apply, on a form provided by the commissioner, to sell,  
101 serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption  
102 in an outdoor dining area or outdoor street dining area, as authorized by any municipal  
103 government or county commission in the which the licensee operates. The Class A retail dealer  
104 shall submit to the municipal government or county commission, for approval, a revised floorplan  
105 and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the  
106 commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or  
107 private outdoor dining, the approved and bounded outdoor area need not be adjacent to the  
108 licensee's licensed premises, but in close proximity and under the licensee's control with right of  
109 ingress and egress. For purposes of this section, "close proximity" means an available area within  
110 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a  
111 nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in

112 conjunction with a temporary private outdoor dining or temporary private outdoor street dining area  
113 set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary private  
114 wine outdoor street dining set forth in §60-8-32a of this code.

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

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

120 (2) Open to the air; and

121 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally  
122 approve a partial enclosure with up to three temporary or fixed walls.

123 Any area where seating is incorporated inside a permanent building with ambient air  
124 through HVAC is not considered outdoor dining pursuant to this subsection.

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

**ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

**§60-3A-8. Retail license application requirements; retail licensee qualifications.**

1 (a) Prior to or simultaneously with the submission of a bid for a retail license or the payment  
2 of a purchase option for a Class A retail license, each applicant shall file an application with the  
3 commissioner, stating under oath, the following:

4 (1) If the applicant is an individual, his or her name and residence address;

5 (2) If the applicant is other than an individual, the name and business address of the  
6 applicant; the state of its incorporation or organization; the names and residence addresses of  
7 each executive officer and other principal officer, partner, or member of the entity; a copy of the  
8 entity's charter or other agreement under which the entity operates; the names and residence  
9 addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock,

10 partnership, or other interests in the applicant; and all applicants and licensees must list a  
11 manager on the applicant's license application, or a licensee's renewal application, and further  
12 that the manager shall meet all other requirements of licensure, including, but not limited to, United  
13 States citizenship or naturalization, passing a background investigation, being at least 21 years of  
14 age, being a suitable applicant, being of good moral character, and meet other requirements, all as  
15 set forth in the code and the legislative rules, in order for the manager to be able to meet and  
16 conduct any regulatory matters, including, but not limited to, licensure or enforcement matters  
17 related to the applicant or licensee all in the interest of protecting public health and safety. In order  
18 to maintain active licensure, any change by a licensee in any manager listed on an application  
19 must be made immediately to the commissioner, in order to verify that the new manager meets  
20 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) other crime involving  
23 fraud, dishonesty, or deceit in the five years preceding the date of application, or (C) been  
24 convicted of any felony in this or any other state court or any federal court for a violation of state or  
25 federal alcohol-related distribution laws, and if the applicant is other than an individual, that none  
26 of its executive officers, other principal officers, partners, or members, or any person owning,  
27 directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in  
28 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 applicant shall be issued or eligible to hold a retail license under this article, if:

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

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

54 (e) The commissioner shall not issue a retail license to an applicant which does not hold a  
 55 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 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  
18 to 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 must 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.



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

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

48           (e) *Limitations on licensees.* — A distillery, mini-distillery, or micro-distillery may not sell  
49 more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during  
50 the initial 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may  
51 increase sales at the distillery, mini-distillery, micro-distillery location by 2,000 gallons following the  
52 initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-  
53 distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000  
54 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed  
55 mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery  
56 location. A licensed micro-distillery may not produce more than 10,000 gallons per calendar year

57 at the micro-distillery location. The commissioner may issue more than one distillery, ~~or~~ mini-  
58 distillery, or micro-distillery license to a single person or entity and a person may hold both a  
59 distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-  
60 distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise  
61 specified in the code.

62 (f) Building code and tax classification- Notwithstanding any provision of this code to the  
63 contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this  
64 article on a property does not change the nature or use of the property which otherwise qualifies as  
65 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 multicapacity license and a private wine restaurant license may offer wine by the drink or glass in  
25 a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed  
26 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 liter tax shall 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 code. All wineries must use a distributor to  
57 distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may  
58 enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

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

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

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

67 (m) In the interest of promoting tourism throughout the state, every licensed winery or farm  
68 winery manufacturing wine in this state is authorized with a limited off-site retail privilege at private

69 fair and festivals for off-premises consumption sales of only the winery or farm winery's sealed  
 70 wine. At least five days prior to an approved private fair and festival, an authorized winery or farm  
 71 winery must provide a copy of a written agreement to sell only wine manufactured by the licensed  
 72 winery or farm winery at the private fair and festival's licensed premises. If approved, an  
 73 authorized licensed winery or farm winery may conduct off-premises consumption sales of their  
 74 wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All  
 75 authorized and approved wineries and farm wineries' off-premises consumption sales shall  
 76 comply with all retail requirements in §60-8-1 et seq. of this code, and specifically with respect to  
 77 all markups, taxes, and fees.

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

1 (a) For purposes of this section:

2 (1) "Exotic entertainment" means live nude dancing, nude service personnel or live nude  
 3 entertainment, and "nude" means any state of undress in which male or female genitalia or female  
 4 breasts are exposed, whether partially nude or totally nude. Persons, who are exotic entertainers,  
 5 that are clothed in swimsuits, lingerie, or other limited or scant clothing that completely covers  
 6 male or female genitalia or breasts are not considered nude or partially nude.

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

11 (b) No person may operate any commercial facility where exotic entertainment is permitted  
 12 or offered unless such person is granted a license by the commissioner to operate a an exotic

13 entertainment facility where exotic entertainment may be offered pursuant to this code section and  
14 having been granted a private club license type set forth in §60-7-1 et. seq. of this code. Exotic  
15 entertainment may only occur where a license has been issued for such exotic entertainment  
16 activity. The provisions of this subsection apply whether or not alcoholic liquor, wine, or  
17 ~~nonalcoholic~~ nonintoxicating craft beer, or nonintoxicating beer is legally kept, served, sold, or  
18 dispensed in a facility, or purchased for use in a facility, or permitted to be brought by others into a  
19 facility and whether or not such person holds any other license or permit issued pursuant to  
20 chapter 60 of this code. In accordance with §60-6-9 of this code, no person may operate a "bring  
21 your own bottle" or "BYOB" club as set forth in that section whether there is exotic entertainment or  
22 not.

23 (c) A licensee is subject to all the regulatory provisions of §60-7-1 *et seq.* of this code.  
24 ~~whether or not the licensee is otherwise a private club~~ The commissioner shall have all the powers  
25 and authorization granted under §60-7-1 *et seq.* of this code to regulate, restrict, and sanction a  
26 licensee under this section. No licensee may purchase, keep, sell, serve, dispense, or purchase  
27 for use in a licensed facility, or permit others to bring into the facility, any alcoholic liquor, wine, or  
28 nonintoxicating beer or nonintoxicating craft beer without having the appropriate license. No  
29 licensee may operate a private club without being licensed.

30 (d) No person or licensee may allow a person under the age of 18 years to perform as an  
31 exotic entertainer. No person under the age of 21 years, other than a performing exotic entertainer,  
32 may be allowed to be in a commercial facility on any day on which any exotic entertainment is  
33 offered therein. No licensee may hold special nonalcoholic entertainment events for persons  
34 under age 21 pursuant to the provisions of §60-7-8 of this code in the licensed facility. No person  
35 under the age of 18 may be in the employ or works as an independent contractor for a licensed  
36 exotic entertainment facility.

37 (e) A person to whom a license is issued or renewed under the provisions of this section  
38 shall pay annually to the commissioner a license fee of ~~\$3,000~~ matching the private club license  
39 type applied for, or to be renewed, as set forth in §60-7-1 et seq. of this code. A municipal  
40 corporation wherein any such licensee is located shall issue a municipal license to any person to  
41 whom the commissioner has issued a license and may impose a license fee not in excess of the  
42 state license fee.

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

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

58 (h) The provisions of this section do not apply to places set apart for traditional family-  
59 oriented naturist activities, unless such places operate a private club type as set forth in §60-7-1 et  
60 seq. of this code.

## **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 applicant or licensee desires to sell baked goods infused with liquor, wine,  
45 or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle, or some  
46 other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked  
47 goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing  
48 alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or  
49 nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. This  
50 applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-  
51 premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this

52 subdivision which:

53 (i) Has at least 50 members;

54 (ii) Operates a kitchen that produces baked goods, as specified in this subdivision,  
55 including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and  
56 cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator  
57 and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen  
58 utensils, and other food consumption apparatus as determined by the commissioner; and (V) food  
59 fit for human consumption available to be served during all hours of operation on the licensed  
60 premises;

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

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

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

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

78 the applicant or licensee shall meet the criteria set forth in this subdivision which:

79 (A) Has at least 50 members;

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

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

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

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

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

- 104 (A) Have at least 10 members and guests attending the catering event;
- 105 (B) Have obtained an open container waiver or have otherwise been approved by a  
106 municipality or county in which the event is being held;
- 107 (C) Operate a private club restaurant on a daily operating basis;
- 108 (D) Only use its employees, independent contractors, or volunteers to sell and serve  
109 alcoholic liquors who have received certified training in verifying the legal identification, the age 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 where the space safely accounts for  
120 the ingress and egress of the stated members and guests who will be attending the private  
121 catering event at the catering premises. The unlicensed private venue's floorplan during the set  
122 time period as stated in the contract shall comprise the private caterer's licensed premises, which  
123 is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating  
124 beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises:  
125 *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure, (II) have  
126 other facilities to prepare and serve food and alcohol, (III) have adequate restrooms and sufficient  
127 building facilities for the number of members and guests expected to attend the private catering  
128 event, and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;
- 129 (F) Not hold more than 15 private catering events per calendar year. Upon reaching the

130 16th event, the unlicensed venue shall obtain its own private club license;

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

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

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

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

141 (A) Has at least 100 members;

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

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

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

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

157 (10) "Private food truck" means an applicant for a private club, licensed private club  
158 licensee, or licensed private manufacturer's club licensee that has a primary function of operating  
159 a food preparation business using an industrial truck, van, or trailer to prepare food and meals for  
160 sale at various locations within the state while utilizing a propane or electric generator powered  
161 kitchen. The private food truck applicant shall obtain county or municipal approval to operate for  
162 food and liquor, wine, and nonintoxicating beer or nonintoxicating craft beer sales and service,  
163 while providing a food menu for members and guests. The private food truck applicant shall meet  
164 the criteria set forth in this subdivision which:

165 (A) Has at least 10 members;

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

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

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

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

182 a county or municipality;

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

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

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

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

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

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

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

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

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

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

215 (A) Has at least 100 members;

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

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

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

231 (E) May uncork and serve members and guests up to two bottles of wine that a member  
232 purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when  
233 licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use



234 and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no  
235 event may a member or a group of members and guests exceed two sealed bottles or containers  
236 of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant  
237 and for personal consumption by the member and guests. A member or guest may cork and reseal  
238 any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative rules for  
239 carrying unconsumed wine off the licensed premises;

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

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

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

253 (A) Has at least 100 members;

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

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

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

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

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

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

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

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

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

283 (A) Has at least 100 members;

284 (B) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its  
285 duly elected or appointed officers) of either the municipality or of the county in which the festival,

286 fair, or other event is to be conducted;

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

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

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

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

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

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

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

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

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

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

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

311 (E) Owns or leases, controls, operates, and uses acreage amounting to more than one

312 acre but fewer than three acres, which are contiguous acres of bounded or fenced real property  
313 which would be listed on the licensee's floorplan and would be used for hotel and conferences and  
314 large contracted-for group-type events such as weddings, reunions, conferences, meetings, and  
315 sporting or recreational events;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

388 (A) Has at least 100 members;

389 (B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes,

390 not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

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

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

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

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

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

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

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

408 (A) Has at least 50 members;

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

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

413 (D) Owns or leases, controls, operates, and uses acreage amounting to at least 30  
414 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole  
415 golf course's floorplan and could be used for golfing events and large contracted for group-type

416 events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

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

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

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

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

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

428 (A) Has at least 100 members;

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

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

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

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



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

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

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

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

462 (A) Have at least 100 members;

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

467 (C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or

468 greater than a private club restaurant, as determined by the commissioner, on the licensed  
469 premises and capable of serving freshly prepared food or meals to its stated members, guests,  
470 and patrons who will be attending the event at the private college sports stadium;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

516 (21) "Private farmers market" means an applicant for a private club or licensed private club  
517 licensee that operates as an association of bars, restaurants, retailers who sell West Virginia-  
518 made products among other products, and other stores who open primarily during daytime hours  
519 of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale

520 of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for  
521 on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting  
522 events, reunions, conferences, meetings, or other special events and does not maintain daily or  
523 regular operating hours as a bar or restaurant, and all businesses that are members of the  
524 association have agreed in writing to be liable and responsible for all sales, service, furnishing,  
525 tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft  
526 beer occurring on the entire licensed premises of the private farmer's market, including indoor and  
527 outdoor bounded areas, and further the applicant shall:

528 (A) Have at least 100 members;

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

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

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

543 (E) Have an association that lists in the application for licensure the entire property and all  
544 adjoining buildings and structures on the private farmers market's floorplan which would comprise  
545 the licensed premises, which would be authorized for the lawful sales, service, and consumption of

546 alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed  
547 premises whether these activities were conducted in a building or structure or outdoors while on  
548 the private farmers market's licensed premises and as noted on the private farmers market's  
549 floorplan;

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

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

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

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

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

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

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

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

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

570 (A) Has at least 25 members;

571 (B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions,

572 conferences, meetings, or other events where parties reserve or contract for the venue, facility,  
573 barn, or pavilion in advance of the event;

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

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

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

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

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

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

596 (23) "Private multi-sport complex" means an applicant for a private club or licensed private  
597 club licensee that is open for multiple sports events to be played at the complex facilities, reserved

598 weddings, concerts, reunions, conferences, meetings, or other special events, and which:

599 (A) Has at least 100 members;

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

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

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

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

619 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining  
620 buildings and structures on the private multi-sport complex's floorplan which would comprise the  
621 licensed premises, which would be authorized for the lawful sales, service, and consumption of  
622 alcoholic liquors throughout the licensed premises whether these activities were conducted in a  
623 building or structure or outdoors while on the private multi-sport complex's licensed premises and

624 as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and  
625 nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by  
626 the licensee and also operated by the licensee when the golf cart or food truck is located on the  
627 private multi-sport complex's licensed premises;

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

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

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

632 (24) "Private coliseum or center" means an applicant for a private club or licensed private  
633 club licensee that is open for various events including, but not limited to, musical concerts, bands,  
634 sporting events, monster trucks, sports entertainment events, circus, expos, hobby events,  
635 tradeshows, health events, reserved weddings, reunions, retreats, conventions, conferences,  
636 meetings, or other special events. The licensee may not sell alcoholic liquors when conducting or  
637 hosting non-professional sporting events, or events focused on patrons who are less than 21  
638 years of age, and further the applicant shall:

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

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

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

646 (D) Own or lease, control, operate, and use acreage amounting to at least two contiguous  
647 acres of bounded or fenced real property, as determined by the commissioner, which would be  
648 listed on the private coliseum or center's floorplan and could be used for contracted-for events, as  
649 noted above, or a private fair and festival, as authorized by the commissioner per dual licensing



650 requirements as set forth in §60-7-2a of this code;

651 (E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings  
652 and structures on the private coliseum or center’s floorplan comprising the licensed premises, and  
653 be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the  
654 licensed premises whether these activities were conducted in a building or structure or outdoors  
655 while on private coliseum or center’s licensed premises;

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

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

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

660 The Department of Natural Resources, the authority governing any county or municipal  
661 park, or any county commission, municipality, other governmental entity, public corporation, or  
662 public authority operating any park or airport may lease, as lessor, a building or portion thereof or  
663 other limited premises in any park or airport to any corporation or unincorporated association for  
664 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 for the  
18 ingress and egress of the stated members and guests who will be attending the special event at  
19 the licensed premises. During the contracted rental time period, the private fair and festival  
20 licensee is wholly responsible and liable for the proper sale and serving of alcoholic liquors and  
21 nonintoxicating beer in the area designated as the private fair and festival's temporary floorplan,  
22 as set forth in this article. The venue's private fair and festival's temporary floorplan during the set  
23 time period as stated in the contract shall comprise the private fair and festival's licensed premises  
24 for the temporary special event, which is authorized for the lawful sale, service, and consumption  
25 of alcoholic liquors and nonintoxicating beer ~~and nonintoxicating craft beer, and wine~~ throughout  
26 the private fair and festival's licensed premises during this dually licensed temporary special  
27 event: Provided, That the venue private fair and festival's licensed premises dually shared and  
28 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
- 31 ~~(3)~~ sufficient building facilities for the expected number of members and guests ~~expected~~  
32 ~~to attend~~ attending the event;
- 33 (3) comply with all other requirements of its license in this article; and

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

36           ~~(c) A licensee defined in §60-7-2 of this code may not be limited or restricted in any way as~~  
37 ~~to the number of events that may be held on the premises so long as the licensee continues to~~  
38 ~~operate its primary business in good standing with the Commissioner~~ There is no limit on the  
39 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, or private resort hotel to be licensed as a private caterer as defined in  
7 §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a  
8 private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-  
9 hole golf course, private farmers market, private food truck, private college sports stadium, private  
10 professional sports stadium, private multi-sport complex, private manufacturer club, or a private  
11 tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club  
12 restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or  
13 fewer designated areas, ~~or~~ a private golf club as defined in §60-7-2 of this code, or a private  
14 coliseum or center as defined in §60-7-2 of this code; and further, if the private club is a private  
15 resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within  
16 the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided  
17 for by this article. The annual license fee for a private resort hotel with five or fewer designated  
18 areas is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more  
19 than 10 designated areas is \$12,500. The annual license fee for a private resort hotel with at least

20 11, but no more than 15 designated areas shall be \$17,500. The annual license fee for a private  
21 resort hotel with no fewer than 15 nor more than 20 designated areas is \$22,500. A private resort  
22 hotel that obtained the license and paid the \$22,500 annual license fee may, upon application to  
23 and approval of the commissioner, designate additional areas for a period not to exceed seven  
24 days for an additional fee of \$150 per day, per designated area.

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

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

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

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

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

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

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

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

1 (a) There is hereby created a special license designated Class S2 private fair and festival  
 2 license for the retail sale of liquor, ~~wine~~ 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 application with the ~~commission~~ commissioner at least 15 days ~~pursuant~~  
 9 prior to the private fair, festival, or other event;

10 (3) Pay a nonrefundable nonprorated license fee of ~~\$500~~ \$750; 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 be purchased from the licensed distributor~~s~~ that services the area in which the  
 17 private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor,  
 18 all in accordance with §11-16-1 et seq. of this code. Sales of sealed containers of nonintoxicating  
 19 beer or nonintoxicating craft beer may be sold for off-premises consumption if the nonintoxicating  
 20 beer and nonintoxicating craft beer ~~is being sold by an authorized brewer or resident brewer, as~~  
 21 set forth in §11-16-6a(d) of this code, who manufactures that nonintoxicating beer or  
 22 nonintoxicating craft beer in this state. ~~are purchased from the licensed distributor that services the~~  
 23 area in which the private fair, festival, or other event is being held and such licensed distributor. ~~The~~  
 24 off-premises consumption sales shall be made pursuant to a written agreement between the

25 private fair and festival and an authorized brewer or resident brewer. An authorized brewer or  
26 resident brewer who agrees to offer such off-premises consumption sales of their nonintoxicating  
27 beer or nonintoxicating craft beer from a booth or other facility on the private fair and festival's  
28 licensed premises prior to the start of the private fair and festival must meet the requirements of  
29 §11-16-6a(d) of this code. s, or other event The written agreement with each authorized brewer or  
30 resident brewer must account for lawful sales of nonintoxicating beer and nonintoxicating craft  
31 beer sold for off-premises consumption as set forth in §11-16-1 et seq. of this code. The authorized  
32 and approved brewer, resident brewer, or its licensed representatives may give or sell approved  
33 promotional items to private fair and festival members and guests, but not to the private fair and  
34 festival's volunteers, independent contractors, or employees.

35 (e) Wine or cider sold, furnished, tendered, or served for on-premises consumption by the  
36 private fair and festival pursuant to the license created by this section shall be purchased from a  
37 licensed wine or hard cider distributor, winery, or farm winery in accordance with §60-8-1 et seq. of  
38 this code and §60-8A-1 et seq. of this code, as applicable. Sales of sealed containers of wine or  
39 cider may be sold for off-premises consumption if the wine is purchased from a licensed distributor  
40 is being sold by an authorized winery or farm winery, as set forth in §60-4-3b(m) and §60-8A-5(c)  
41 of this code, who manufactures that wine or cider in this state. The off-premises consumption  
42 sales shall be made pursuant to a written agreement between the private fair and festival and an  
43 authorized winery or farm winery. and the licensed distributor, winery, or farm winery An authorized  
44 winery or farm winery who agrees to offer their wine or cider for off-premises consumption sales  
45 from a booth or other facility on the private fair and festival's licensed premises prior to the start of  
46 the private fair, festival or other event must meet the requirements of §60-4-3b(m) and §60-8A-5(c)  
47 of this code, as applicable. The written agreement with each authorized winery or farm winery  
48 must account for lawful sales of wine or cider sold for off-premises consumption as set forth in §60-  
49 8-1 et seq. of this code and §60-8A-1 et seq. of this code, as applicable. The authorized and  
50 approved winery, farm winery or its licensed representatives may give or sell approved

51 promotional items to private fair and festival members and guests, but not to the private fair and  
52 festival's volunteers, independent contractors, or employees.

53 (f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private  
54 fair and festival pursuant to the license created by this section shall be purchased from a licensed  
55 retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is  
56 occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sales of sealed containers of liquor  
57 may be sold for off-premises consumption if the liquor is ~~purchased~~ being sold by an authorized  
58 distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures  
59 their liquor in this state. Off-premises consumption sales shall comply with §60-3A-17 of this code  
60 and §60-4-3a(c) of this code shall not apply to these sales. The off-premises consumption sales  
61 shall be made pursuant to a written agreement between the private fair and festival and an  
62 authorized distillery, mini-distillery, or micro-distillery. ~~from the licensed retail liquor outlet in the~~  
63 ~~market zone or contiguous market zone where the private fair, festival, or other event is occurring~~  
64 ~~and the licensed retail liquor outlet~~ An authorized licensed distillery, mini-distillery, or micro-  
65 distillery who agrees to offer such off-premises consumption sales of their manufactured liquor  
66 from a booth or other facility on the private fair and festival's licensed premises prior to the start of  
67 the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this  
68 code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery must  
69 account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 of this  
70 code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed  
71 representatives may give or sell approved promotional items to private fair and festival members  
72 and guests, but not to the private fair and festival's volunteers, independent contractors, or  
73 employees.

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

76 (h) Licensed representatives of a an authorized and approved brewer, resident brewer,  
77 beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-  
78 distillery, and liquor broker representatives may attend a private fair and festival and discuss their  
79 respective products but shall not engage in the selling, furnishing, tendering, or serving of any  
80 nonintoxicating beer, nonintoxicating craft beer, wine, cider, or liquor. However, licensed  
81 representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-  
82 distillery, when their licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery,  
83 or micro-distillery have agreed in writing to conduct off-premises consumption sales of their  
84 respective licensee's products at the private fair and festival, may discuss their respective  
85 products and engage in the selling of sealed bottles or cans of their respective nonintoxicating  
86 beer, nonintoxicating craft beer, wine, cider, or liquor products for off-premises consumption. All  
87 taxes and fees must be paid on lawful sales.

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

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

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



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

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

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

## **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 licensed premises:  
 4 *Provided*, That each business is licensed separately and operates separate cash registers and  
 5 maintains separation barriers between the different licensed operations. Failure of a licensee to  
 6 license two inner-connected businesses shall subject the licensee to the penalties under this  
 7 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 cider. At least five days prior to an  
27 approved private fair and festival, an authorized winery or farm winery must provide a copy of a  
28 written agreement to sell only 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 cider from a designated booth at the private fair  
31 and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm  
32 wineries' off-premises consumption sales of cider shall comply with all retail requirements in §60-  
33 8-1 et seq. of this code and §60-8A-1 et seq. of this code, and specifically with respect to all  
34 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 nonprorated and nonrefundable license fee  
49 is \$50.

NOTE: The purpose of this bill is to expand and clarify amendments to the code made in HB 4848 passed during the 2022 Legislative Regular Session. The bill edits nonintoxicating beer, nonintoxicating craft beer, cider, wine, and liquor license requirements which are permitted under the 21<sup>st</sup> Amendment to the US Constitution and the W. Va. Const Art, VI, §46; to promote tourism in the state by permitting authorized brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries a limited off-site retail privilege at private fair and festivals for off-premises consumption sales for nonintoxicating beer, nonintoxicating craft beer, cider, wine, and liquor manufactured by the brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries, certain license requirements, requiring payment of taxes, fees and markups, and no license fee; clarifying nonintoxicating beer and retail liquor outlet license requirements; permitting multiple places of manufacture for certain brewers or resident brewers; clarifying that the statute applying to distilleries and mini-distilleries also applies to micro-distilleries; clarifying that tamper evident sealed beer growlers may include a mix of ice and water to create beer slushies; clarifying places of manufacture for resident brewers based on manufacturing capacity or volume; clarifying that license applicants can utilize a trust subject to certain disclosure requirements that exempt the trust instrument from FOIA; clarifying that exotic entertainment facility applicants and licensees are licensed as various private club license types and are treated equally by being charged the same private club license type license fee; clarifying exotic entertainment; creating a private coliseum or center license, requirements, permitting dually licensed events, and a license fee; clarifying dual licensing requirements and authorization for private fair and festivals and private coliseums or centers to conduct dual licensed events, requirements, and no license fee; permitting private fairs and festivals to conduct on-premises consumption sales with certain requirements; permitting private fairs and festivals to allow authorized brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries to conduct limited off-premises consumption retail sales with certain requirements while using a booth on the private fair and festival's licensed premises; and permitting a licensed private wine restaurant to have a separately licensed but connected licensed wine specialty shop.

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