

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2054**

By Delegate W. Clark

[Enter References]

1 A BILL to amend and reenact §60-4-3a; §60-7-2; §60-7-3; §60-7-8c; §60-7-8d; §60-7-8e; §60-7-  
2 8g; §60-8-2; and §60-8-32a of the Code of West Virginia, 1931, as amended, amending  
3 liquor sampling requirements; revising definitions; addressing and making minor  
4 corrections in the Alcohol Beverage Control Administration ("ABCA") code sections  
5 correcting mistakes relating to a \$100 requirement for canned or packaged food; removing  
6 the requirement that a private farmers market or private food court with two or more  
7 unrelated vendors applying for a license must certify that all vendors have agreed to  
8 liability responsibility therein and removing the requirement that a private farmers market  
9 or private food court provide a written copy of the agreement between all vendors  
10 acknowledging that each vendor is jointly and severally liable for any violations;  
11 authorizing the use of self-pour automated systems for nonintoxicating beer, cider, and  
12 wine by the drink on licensee premises; removing the requirement that a joint and several  
13 liability agreement be executed between the multiple vendors at a multi-vender fair or  
14 festival; regulating private clubs sale and service of alcoholic and non-intoxicating  
15 beverages; providing limitations on sealed craft cocktail or wine growlers sold to persons  
16 who have dined in an establishment, or a patron who is in vehicle while picking up food or a  
17 meal and ordered a sealed craft cocktail or wine growler; clarifying and expanding the  
18 types of licensed entities authorized to participate in a duly permitted private outdoor  
19 designated area ("PODA"); defining terms; exempting certain licensees from certain fees;  
20 authorizing consumer activity within a PODA; authorizing S1, S2, and S3 licensees to  
21 participate in a private outdoor designated area on the premises of a participating Class S4  
22 permit holder upon written invitation of the Class S4 permit holder; correcting mistaken  
23 listed percentage for fortified wine; all generally relating to the licensing, sale and service of  
24 alcoholic liquor, nonintoxicating beer or nonintoxicating craft beer, wine, cider, craft and  
25 cocktails as beverages or sealed containers, and where same may be sold and served.

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

## CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

### ARTICLE 4. LICENSES.

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

14           (b) Retail on-premises and off-premises consumption sales. — Every licensed distillery,  
15 mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-  
16 13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-  
17 25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-7-  
18 1 *et seq.* of this code, applicable to liquor retailers, and distillers. In the interest of promoting  
19 tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery  
20 manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private fairs  
21 and festivals, for on-premises consumption sales served by the drink or glass, off-premises  
22 consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's

sealed liquor. At least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct on-premises and off-premises consumption sales of its liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail requirements of §60-7-1 *et seq.* of this code when applicable. Additionally, every authorized distillery, mini-distillery, and micro-distillery may provide samples to patrons who are 21 years of age and older and who are not intoxicated. The liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed:

~~(1) Three separate and individual sample servings per customer verified to be 21 years of age or older; and~~

~~(2) Six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed six ounces.~~

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

(d) Payments to market zone retailers. — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. Any sales by a distillery, mini-distillery, or micro-distillery at a private fair and festival are treated as occurring on their licensed premises for purposes of this market zone calculation. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is \$15,000 per annum.

(e) Limitations on licensees. — A distillery, mini-distillery, or micro-distillery may not produce more than 50,000 gallons per calendar year. The commissioner may issue more than one distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

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

(g) A political subdivision of this state may not regulate any of the following activities of a distillery, mini-distillery, or micro-distillery licensed and operating in accordance with this section:

(1) The on-premises sale, tasting, or consumption of liquor during business hours set forth in §60-7-12 of this code;

(2) The storage, warehousing, and wholesaling of liquor in accordance with the rules of the commissioner and federal law or regulations; or

(3) The sale of liquor related items including but not limited to the sale of pre-packaged food not requiring kitchen preparation that are incidental to the sale of liquor and on-premises consumption.

**ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

**§60-7-2. Definitions; authorizations; requirements for certain licenses.**

Unless the context in which used clearly requires a different meaning, as used in this article:

~~(1)~~ "Applicant" means a private club applying for a license under the provisions of this article.

~~(2)~~ "Code" means the official Code of West Virginia, 1931, as amended.

~~(3)~~ "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

~~(4)~~ "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

~~(5)~~ "Private club" means any corporation or unincorporated association which either:

(A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company

of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which a club has been established, to which are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

~~(6)~~ "Private bakery" means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods where the applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, included: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) from an infusion packet containing alcohol no greater than 10 milliliters where

the purchaser adds the alcohol. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises or off-premises consumption. The applicant or licensee may sell the baked goods with alcohol added as authorized for on-premises and off-premises consumption. Further, the applicant or licensee shall:

(i) Have at least 50 members;

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

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

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

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

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by using a private caterer,



for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall:

(A) Have at least 50 members;

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

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

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

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

~~(8)~~ "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet

authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(A) Have at least 10 members and guests attending the catering event;

(B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(C) Operate a private club restaurant on a daily operating basis;

(D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(E) Provide to the commissioner, at least seven days before the event is to take place:

(i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(ii) The name of the owner or operator of the unlicensed private venue;

(iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period and where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises:

*Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure; (II) have other facilities to prepare and serve food and alcohol; (III) have adequate restrooms and sufficient

building facilities for the number of members and guests expected to attend the private catering event; and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

(F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

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

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

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

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

(A) Has at least 100 members;

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

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

(D) Uses an age verification system approved by the commissioner for the purpose of

verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian. If a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

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

~~(10)~~ "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while using a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall:

(A) Have at least 10 members;

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

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

(D) Is sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operated. Each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provide the commissioner with a list of all locations, including a main business location,

where the private food truck operates, and is approved for sales pursuant to paragraph (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

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

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

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

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

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

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

(L) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be

204 permitted to purchase food or other items;

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

206 (N) Meet and be subject to all other applicable private club requirements.

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

213 (A) Has at least 100 members;

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

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

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

229 (E) May uncork and serve members and guests up to two bottles of wine that a member

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

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

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

~~(42)~~ "Private manufacturer club" means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufactures liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which:

(A) Has at least 100 members;

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

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and

apparatus as determined by the commissioner on the licensed premises and serves food:  
*Provided*, That a licensee required by the provisions of this code to serve food on premises in order to lawfully serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, wine, or hard cider may meet the requirement of having on-premises food preparation facilities by, during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site an operating food truck or other portable kitchen: *Provided, however*, That the approval of the commissioner and the appropriate health department is required to operate as allowed by subsection (a) of this section;

(D) Maintains, at any one time fresh food capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

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

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

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



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

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

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

(A) Has at least 100 members;

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

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

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

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

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

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

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

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

(A) Has at least 2,000 members;

(B) Offers short-term, daily rate accommodations or lodging for members and their guests

amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

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

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

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

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

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

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

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

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and

liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

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

(A) Has at least 5,000 members;

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

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

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

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's

floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

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

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

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

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

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

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on

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

~~(16)~~ "Private golf club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

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

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

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

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

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

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

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

414 ~~(17)~~ "Private nine-hole golf course" means an applicant for a private club or licensed  
415 private club licensee which:

416 (A) Has at least 50 members;

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

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

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

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

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

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

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

435 ~~(18)~~ "Private tennis club" means an applicant for a private club or licensed private club  
436 licensee which:

437 (A) Has at least 100 members;

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

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

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

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

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

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

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

~~(19)~~ "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III sports and that involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or temporarily hosting non-collegiate sporting events. This license

may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college or university stadium: *Provided*, That any outside area approved for alcohol sales and nonintoxicating beer or nonintoxicating craft beer shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

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

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

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

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



whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

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

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

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

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

(A) Have at least 1,000 members;

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

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

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

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

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

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

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

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

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

(A) Have at least 100 members;

(B) Have one or more members operating a private club restaurant and full kitchen with

ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serve freshly prepared food at least 15 hours per week;

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

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

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

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

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

(H) Only use its employees, independent contractors, or volunteers to purchase, sell,

furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

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

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

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

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

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

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

(A) Has at least 25 members;

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

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

(D) Owns or leases, controls, operates, and uses space sufficient to safely operate the

licensed premises. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's or barn's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

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

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

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

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

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

(A) Has at least 100 members;

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

(C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private multi-sport complex. A licensee may contract with temporary food vendors

or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

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

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

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

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

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

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

(24) "Private coliseum or center" means an applicant for a private club or licensed private

club licensee that is open for various events including, but not limited to, musical concerts, bands, sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events, tradeshow, health events, reserved weddings, reunions, retreats, conventions, conferences, meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer or wine when conducting or hosting events focused on patrons who are less than 21 years of age, and further the applicant shall:

(A) Have at least 5,000 members;

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

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

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

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

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

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

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

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

(A) Have at least 100 members;

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

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

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

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



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

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

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

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

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

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

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

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

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

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

724 authority operating any park or airport may lease, as lessor, a building or portion thereof or other  
725 limited premises in any park or airport to any corporation or unincorporated association for the  
726 establishment of a private club pursuant to this article.

**§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.**

1       (a) Notwithstanding any other provisions of this code to the contrary, licensees are hereby  
2 authorized to sell, tender, and serve alcoholic liquors by the drink and as otherwise authorized by  
3 the provisions of §60-1-1 *et seq.*, §60-8-1 *et seq.*, and §60-8A-1 *et seq.* of this code, other than in  
4 sealed packages, for consumption on the premises of the licensees, to their members and their  
5 guests in accordance with the provisions of this article, rules of the commissioner and as  
6 authorized under §60-6-8 of this code. The licensees may keep and maintain on their premises a  
7 supply of those lawfully acquired alcoholic liquors in such quantities as may be appropriate for the  
8 conduct of operations thereof.

9       (b) Authorization for use of self-pour automated systems for nonintoxicating beer, cider,  
10 and wine.

11       (1) A licensee authorized pursuant to this article to sell alcoholic liquor and/or  
12 nonintoxicating, beer, cider or wine for on-premises consumption may use a self-pour automated  
13 system that, upon activation of a payment card by the licensee, may be operated to dispense  
14 nonintoxicating beer, cider not exceeding six percent alcohol by volume and wine to the following:

15 (A) An employee of the licensee who is authorized by law to serve alcoholic beverages, or (B) a  
16 person whom the licensee has verified to be 21 years of age or older who displays a government-  
17 issued identification card that matches the name on the payment card. Such verification that a  
18 person is 21 years of age or older shall be recorded by the licensee or an employee of the  
19 licensee.

20       (2) A self-pour automated system authorized by subsection (a) of this section shall not  
21 dispense a serving of more than (1) 32 ounces of nonintoxicating beer, (2) 32 ounces of cider not  
22 exceeding six percent alcohol by volume, or (3) 10 ounces of wine, before the payment card is

23 reactivated by the licensee or an employee of the licensee.

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

1 (a) There is hereby created a special license designated Class S3 private multivendor fair  
2 and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft  
3 beer for on-premises consumption at an event where multiple vendors shall share liability and  
4 responsibility, and apply for this license. Each vendor may temporarily purchase, sell, furnish, or  
5 serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

6 (b) To be eligible for the license authorized by subsection (a) of this section, the private  
7 multivendor fair and festival or other event shall:

8 (1) Be sponsored, endorsed, or approved by the governing body or its designee of the  
9 county or municipality in which the private multivendor fair and festival or other event is located;

10 (2) Jointly apply to the commissioner for the special license at least 15 days prior to the  
11 private fair, festival, or other event;

12 (3) Pay a nonrefundable nonprorated license fee of \$500 per event that may be divided  
13 among all the vendors attending the event;

14 (4) Be approved by the commissioner to operate the private multivendor fair, festival, or  
15 other event;

16 (5) Be limited to no more than 15 consecutive days;

17 (6) Have at least two separate and unrelated vendors applying for the license and certifying  
18 that at least 100 members will be in attendance;

19 (7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and  
20 provide adequate freshly prepared food or meals to serve its stated members and guests who will  
21 be attending the temporary festival, fair, or other event, and provide any written documentation or  
22 agreements of the food caterer to the commissioner prior to approval of the license;

23 (8) Only use its employees, independent contractors, or volunteers to purchase, sell,

furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private multi-vendor festival, fair, or other event;

~~(10) Provide an executed agreement between the vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the multi-vendor festival or fair event~~

~~(11)~~ (10) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, and whether a member, patron, or guest is intoxicated, to provide for the public health and safety of members, patrons, and guests;

~~(12)~~ (11) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and the floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

~~(13)~~ (12) Meet and be subject to all other private club requirements; and

~~(14)~~ (13) Use an age verification system approved by the commissioner.

(c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from the licensed distributor that services the area in which the private multi-vendor fair and festival will be held or from a resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 *et seq.* of this code.

(d) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(e) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-3A-1 *et seq.* of this code.

(f) A licensee authorized by this section may use bona fide employees, independent contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer, or nonintoxicating craft beer; *Provided*, That the licensee shall train all employees, independent contractors, or volunteers to verify legal identification and to verify signs of intoxication.

(g) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor brokers may attend a private multi-vendor festival or fair and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.

(h) A licensee licensed under this section is subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of each private multi-vendor fair and festival. The commissioner may revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

**§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.**

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A

temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close proximity" means an available area within 300 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

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

(2) Open to the air; and

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

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

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail

growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is (i) in-person or in-vehicle while picking up food or a meal, or (ii) in-person to a patron having dined on food or a meal, and (iii) has ordered a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

**§60-7-8e. Private club restaurant or private manufacturer club licensee's authority to sell craft cocktail growlers.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state's growing distilling industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private manufacturer club is authorized under a current and valid license and meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There shall be a \$100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) *Retail sales.* — Every licensee licensed under this section shall comply with all the

provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes.* — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising.* — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) *Craft cocktail growler defined.* — For purposes of this chapter, "Craft Cocktail Growler" means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

~~(h)~~ (g) *Craft cocktail growler requirements.* — A licensee licensed under this section must prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a



craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

~~(i)~~ (h) *Craft cocktail growler labeling.* — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

~~(j)~~ (i) *Craft cocktail growler sanitation.* — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article: *Provided*, That, if the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler must only be used one-time, for one filling, and be discarded after the one-time use.

~~(k)~~ (j) *Pre-mixing of craft cocktail.* - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft

cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and is also subject to the requirements of this section for a craft cocktail growler.

~~(f)~~ (k) *Limitations on licensees.* — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, or in-person to a patron having dined on food or a meal and has ordered and a sealed craft cocktail growler ~~order-to-go~~, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron ~~who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises~~ or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

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

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

(a) There is hereby created a special permit, designated Class S4, for the sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer in a private outdoor designated area that has been approved by a municipality pursuant to §8-12-26 of this code. Each Class S4 permittee may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) Definitions:

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

(2) "Qualified permit holder" means the holder of ~~a Class A, Class B, or Class S2 license issued under this article that elects to operate within a private outdoor designated area, and a Class S4 special permit pursuant to §60-7-1 et seq. of this code~~ any of the following:

(i) A Class A private club type license or Class S2 or Class S3 license issued under this article;

(ii) A Class A tavern or brewpub license or Class S or Class S1 license issued under §11-16-1 et seq. of this code; or

(iii) A Class A private wine restaurant, private wine bed and breakfast, or private wine spa license issued under §60-8-1 et seq. of this code; or

(iv) A Class A hard cider license issued under §60-8A-1 et seq. of this code.

(c) To be eligible for the special Class S4 permit authorized by subsection (a) of this section, the qualified permit holder shall:

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

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

(3) Pay a nonrefundable non-prorated annual special permit fee of \$100 to the commissioner: Provided, That this fee does not apply to qualified permit holders with a Class S1, Class S2, or Class S3 license, which are subject only to the applicable fees in §11-16-1 et seq. and §60-7-1 et seq. of this code;

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

commissioner;

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

(6) Provide the days and hours of operation in the private outdoor designated area;

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

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

(9) Provide a floorplan for the private outdoor designated area indicating a legally demarcated area that is bounded or utilizes signage to safely account for the ingress and egress of members, patrons, and guests who will be within the private outdoor designated area and also be permitted to carry liquor, wine, nonintoxicating beer, and nonintoxicating craft beer on and off of the qualified permit holders' licensed premises and within the private outdoor designated area when contained in an approved non-glass container: Provided, That customers within the private outdoor designated area may carry alcoholic beverages purchased from any holder of a Class S4 permit and served in an approved non-glass container into and out of, and consume the same within, the establishment of any other holder of a Class S4 permit within the applicable private outdoor designated area. The private outdoor designated area's floorplan does comprise a separate licensed premises authorized only for the lawful consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises when lawfully purchased from a qualified permit holder;

(10) Meet and be subject to all other applicable license requirements;

(11) Provide a plan to prevent members, guests, and patrons from bringing, consuming, or

selling alcohol not in an approved non-glass container in the private outdoor designated area; and

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

(d) Notwithstanding the requirement to acquire a Class S4 permit to operate within a private outdoor designated area set forth in §60-7-8g(c) of this code, the holder of a Class S, Class S1, Class S2, or Class S3 license may participate in a private outdoor designated area on the premises of a Class S4 permit holder if that Class S4 permit holder grants permission, in writing, for the Class S, Class S1, Class S2, or Class S3 licensee to so participate. Any Class S, Class S1, Class S2, or Class S3 licensee may not participate in a private outdoor designated area pursuant to such written permission unless it has first met all applicable permit and fee requirements found in §11-16-1 et seq. and §60-7-1 et seq. of this code.

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

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

~~(f)(g)~~ The commissioner shall enforce any violations of §11-16-1 et seq. and ~~chapter 60~~ §60-1-1 et seq. of this code committed by individual qualified permit holders against their permit and ~~Class A, Class B, or Class S2~~ any other current license issued by the commissioner to the qualified permit holder alleged to be in violation.

~~(g)(h)~~ A qualified permit holder that is separately authorized for an outdoor dining area or sidewalk dining area may continue to operate those areas in conjunction with the private outdoor designated area subject to the commissioner's requirements. Notwithstanding any other section of the code, a private outdoor designated area is authorized to simultaneously host multiple qualified permit holders as defined in §60-7-1 et seq. of the code.

~~(h)(i)~~ A licensee permitted under this section is subject to all other provisions of ~~this~~ the

84 article under which the licensee's license is issued, as well as to ~~and~~ the rules and orders of the  
85 commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or  
86 exceptions with respect to those provisions, rules, or orders as required by the circumstances of  
87 for the operation of qualified permit holders in each private outdoor designated area. The  
88 commissioner may revoke or suspend immediately any permit issued under this section prior to  
89 any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no  
90 circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with  
91 respect thereto.

1

## **ARTICLE 8. SALE OF WINES.**

### **§60-8-2. Definitions.**

1 Unless the context in which used clearly requires a different meaning, as used in this  
2 article:

3 "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control  
4 Commissioner.

5 "Distributor" means any person whose principal place of business is within the State of  
6 West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery  
7 stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs,  
8 or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry, and  
9 Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under  
10 authority of this article and maintains a warehouse in this state for the distribution of wine. For the  
11 purpose of a distributor only, the term "person" means and includes an individual, firm, trust,  
12 partnership, limited partnership, limited liability company, association, or corporation. Any trust  
13 licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or  
14 other persons in active control of the activities of the trust relating to the distributor license, is liable  
15 for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or

violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Fortified wine" means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500. The term "grocery store" also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to the separate or segregated portion, exclusive of sales of wine, of not less than \$500 and an average monthly inventory, exclusive of inventory of wine, of not less than \$500.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one-half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

"Hard Cider Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term "person" means and includes an

individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Licensee" means the holder of a license granted under the provisions of this article.

"Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 15.6 percent and less than or equal to 17 percent.

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

"Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate



68 segregated portion of its premises to serve wine to its members and their guests when the sale  
69 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-  
70 paying members and their guests while in the company of a member and does not admit the  
71 general public. Private clubs that meet the private wine restaurant requirements in this definition  
72 shall be considered private wine restaurants: *Provided*, That, a private wine restaurant shall have  
73 at least two restrooms: *Provided, however*, That the two restroom requirement may be waived by a  
74 written waiver provided from a local health department to the commissioner: *And provided further*,  
75 That a private wine restaurant located in an historic building may also be relieved of the two  
76 restroom requirement if a historic association or district with jurisdiction over a historic building  
77 provides a written waiver of the requirement to the commissioner: *And provided further*, That in no  
78 event shall a private wine restaurant have less than one restroom. *And provided further*, That a  
79 winery or farm winery holding a private wine restaurant license or a multi-capacity winery or farm  
80 winery license is not subject to the food service requirements of this subdivision.

81 "Private wine spa" means any business with the sole purpose of providing commercial  
82 facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and  
83 relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or  
84 stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated  
85 association, or other business entity which as part of its general business purpose provides meals  
86 on its premises to its members and their guests; (2) is licensed under the provisions of this article  
87 as to all of its premises or as to a separate segregated portion of its premises to serve up to two  
88 glasses of wine to its members and their guests when the sale accompanies the serving of food or  
89 meals; and (3) admits only duly elected and approved dues-paying members and their guests  
90 while in the company of a member, and does not admit the general public.

91 "Retailer" means any person licensed to sell wine at retail to the public at his or her  
92 established place of business for off-premises consumption and who is licensed to do so under  
93 authority of this article.

"Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

"Table wine" means a wine with an alcohol content by volume between 0.5 percent and 15.5 percent.

"Tax" includes within its meaning interest, additions to tax, and penalties.

"Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the grape variety from which the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 24

percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

**§60-8-32a. Where wine may be sold and consumed for on-premises consumption.**

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, "close proximity," means an available area within 300 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, "private wine outdoor dining and private wine outdoor street dining" include dining areas that are:

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

(2) Open to the air; and

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

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

(e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is (i) in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, or (ii) in-person to a patron having dined on food or a meal and has ordered sealed wine in the original containers of sealed wine growlers to-go subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(f) West Virginia farm wineries possessing a Class A license may serve and sell wine by the glass or by the bottle in accordance with §60-4-3b and §60-8-32a of this code.

NOTE: The purpose of this bill is to amend liquor sampling requirements; revise definitions; address and make minor corrections in the Alcohol Beverage Control Administration ("ABCA") code sections to correct mistakes relating to a \$100 requirement for canned or packaged food; to authorize the use of self-pour automated systems for nonintoxicating beer, cider, and wine by the drink on licensee premises; to remove the requirement that a private farmers market with two or more unrelated vendors applying for a license must certify that all vendors have agreed to liability responsibility therein and to remove the requirement that a private farmers market provide a written copy of the agreement between all vendors acknowledging that each vendor is jointly and severally liable for any violations; to provide limitations on sealed craft cocktail or wine growlers sold to persons who have dined in an establishment, or a patron who is in vehicle while picking up food or a meal and ordered a sealed craft cocktail or wine growler; to clarify and expand the types of licensed entities authorized to participate in a duly permitted private outdoor designated area; to define additional terms; to exempt certain licensees from certain fees; to authorize consumer activity within a private outdoor designated area ("PODA"); to authorize S1, S2, and S3 licensees to participate in a PODA on the premises of a participating Class S4 permit holder upon written invitation of the Class S4 permit holder; to correct mistaken listed percentage for fortified wine; to regulate private clubs sale and service of alcoholic and non-intoxicating beverages; all generally relating to the licensing, sale and service of alcoholic liquor, nonintoxicating beer or nonintoxicating craft beer, wine, cider, craft and cocktails as beverages or sealed containers, and where same may be sold and served.

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