WEST VIRGINIA CODE CHAPTER 60 ARTICLE 4

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§60-4-1. Grant and revocation of licenses; issuance or renewal for calendar year.

The commission shall grant and revoke licenses in accordance with the provisions of this article. Licenses shall be issued and renewed for the period of the calendar year.

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§60-4-2. Licenses for manufacture.

(a) The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

(1) Distilleries in which only alcoholic liquors other than wine or beer is manufactured;

(2) Wineries in which only wines are manufactured;

(3) Breweries in which beer is manufactured;

(4) Bottling plants in which beer only is bottled;

(5) Industrial plants in which alcohol is distilled, manufactured or otherwise produced for scientific, chemical, mechanical or industrial purposes;

(6) Farm wineries in which only wines are manufactured; and

(7) Mini-distilleries in which only alcoholic liquors other than wine, beer or nonintoxicating beer are manufactured.

(b) The commission may grant multiple licenses for the manufacture of alcoholic liquors or nonintoxicating beer to the same person or entity: *Provided,* That such licensure does not violate other provisions of this code, the licensee meets all requirements for the license established by the commissioner, and licensee submits the full payment of all fees required for licensure: *Provided, however*, That the licensee maintains all the rights and privileges associated with each license not violative of state or federal law.

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§60-4-3. To whom licensed manufacturer may sell.

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: *Provided,* That a holder of a winery or a farm winery license may sell wines and a holder of a distillery, mini-distillery, or micro-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of §60-6-2 of this code. Hours of retail sale by a winery or a farm winery or distillery, mini-distillery or micro-distillery are subject to regulation by the commissioner. A winery, distillery, farm winery, or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.

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

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

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

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(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

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consumption.

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

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption on-premises or off-premises. Customers may consume wine on-premises by the glass or drink or by the bottle when consumed by the glass when an operator of a winery or farm winery offers samples pursuant to this section and §60-6-1 of this code, and when the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. Customers may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That under this subsection, a licensed winery or farm winery may offer samples of wine manufactured by that licensed winery or farm winery for consumption on-premises during the hours of operation set forth in §60-8-34 of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly during the hours of operation set forth in §60-8-34 of this code unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Restriction by a political subdivision upon activities and events of farm wineries licensed in accordance with §60-4-3b of the code, to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the state of West Virginia and adjacent states. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the political subdivision shall consider the effect on adjacent property owners and nearby residents.

(c) A political subdivision may not regulate any of the following activities of a farm winery licensed and operating in accordance with this section:

(1) The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

(2) The on-premises sale, tasting, or consumption of wine during business hours set forth in §60-8-34 of this code;

(3) The direct sale and shipment of wine by common carrier to consumers in accordance with the requirements of §60-8-6 and §60-8-6a of this code and the rules of the West Virginia Alcohol Beverage Control Commissioner;

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(4) The storage, warehousing, and wholesaling of wine in accordance with the rules of the West Virginia and federal law or regulations; or

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

(6) To serve and sell wine by the glass or drink and by the bottle when consumed by the glass for consumption on- premises consumption, without the requirement to serve prepared food with the wine or application of any local health department limitations for food service in the area in which the wine is served.

(d) No political subdivision may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

(e) Samples allowed by the provisions of this section may not exceed three fluid ounces and no more than six samples may be given to a patron in any one day.

(f) Samples may be provided only for on-premises consumption.

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

(h) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multi-capacity license and a private wine restaurant license or private manufacturer club license may offer for sale wine by the drink or glass or wine by the bottle when consumed by the glass on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

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

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

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

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to

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§8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) A liter tax shall not be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the liter tax.

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

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

(l) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all associated license fees, unless the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; or direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 *et seq*. of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq*. of this code. All wineries shall use a distributor to distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this code.

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

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

(o) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery 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.

(p) In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the winery or farm winery's wine. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed winery or farm winery

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at the private fair and festival's licensed premises. If approved, an authorized licensed winery or farm winery may conduct on-premises and off-premises consumption sales of its wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales shall comply with all retail requirements in §60-8-1 *et seq*. of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery, farm winery, or unlicensed winery, as referenced in §60-8-3 of this code may provide, sell, and serve wine samples of its wine in the amounts set forth in subsection (b) of this section, wine by the glass or drink, or wine by the bottle, when consumed by the glass, for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated.

(q) Farm Wineries. – A farm winery is permitted to serve and sell wine as authorized by this section without the requirement to serve prepared food or the application of any local health department requirements for food service. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated.

(r) All Farm Wineries may serve and sell wine at any fair or festival in the state of West Virginia consistent with the requirements of §60-8-3 and §60-8-8 of this code.

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§60-4-3c. License required for sale and shipment of liquor by a distillery, mini-distillery or micro-distillery; shipment of limited quantities of liquor permitted by a private direct shipper; requirements; license fee, and penalties.

(a) *Authorization.* — Except for the commissioner, no person may offer for sale liquor, sell liquor, or offer liquor for shipment in this state, except for a licensed private direct shipper. A distillery, mini-distillery, or micro-distillery, whose licensed premises is located in this state or whose licensed premises is located and licensed out of this state, who desires to engage in the sale and shipment of liquor produced by the distillery, mini-distillery, or micro-distillery on its licensed premises, shall ship directly from the licensee's primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older, for personal use, and not for resale under this article. The distillery, mini-distillery, or micro distillery shall obtain a private direct shipper license. Shipments to a purchasing person shall only be to a retail liquor outlet in the market zone in which the purchasing person resides. A private direct shipper may ship liquor subject to the requirements in this chapter in and throughout West Virginia, except for those local option areas designated as "dry" areas under §60-5-1 *et seq*. of this code. A private direct shipper may also sell, and ship liquor out of this state directly from its primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) *License requirements.* — Before sending any shipment of liquor to a purchasing person who is 21 years of age or older, the private direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the $250 non-prorated and nonrefundable annual license fee to ship and sell only liquor;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the private direct shipper is licensed in its state of domicile as a distillery, is authorized by such state to ship liquor;

(6) Obtain from the commissioner a private direct shipper's license;

(7) Submit to the commissioner a list of all brands of liquor to be shipped to West Virginia and attest that all liquor brands are manufactured by the distillery on its licensed premises seeking licensure and are not counterfeit or adulterated liquor;

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(8) Attest that the distillery, mini-distillery, or micro-distillery distills less than 50,000 gallons of liquor each calendar year and provide documentary evidence along with the attestation; and

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) *Shipping Requirements.* — All private direct shipper licensees shall:

(1) Not ship more than two bottles of liquor per month to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older for his or her personal use and consumption, and not for resale. The combined fluid volume of both bottles shall not exceed three liters;

(2) Not ship to any address in an area identified by the commissioner as a "dry" or local option area where it is unlawful to sell liquor under §60-5-1 *et seq*. of this code;

(3) Not ship to any licensed suppliers, brokers, distributors, retailers, private clubs, or other licensees licensed under this chapter or §11-16-1 *et seq*. of this code;

(4) Not ship liquor from overseas or internationally;

(5) Ensure that all containers of liquor shipped to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older, are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

(6) Require a retail liquor outlet to obtain a written or electronic signature upon delivery to a purchasing person who is 21 years of age or older when picking up a sealed liquor delivery order; and

(7) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

(d) *Payment of Fees and Taxes.* —

(1) Any private direct shipper licensee on all sales of liquor must collect and remit the entire wholesale markup percentage and any handling fees, in full, as set forth in §60-3A-17 of the code and by rule of the commissioner to the commissioner at the close of each month and file a monthly report, on a form provided by the commissioner.

(2) Further, the private direct shipper licensee on all sales of liquor shall collect and remit all state sales tax, municipal tax, and local sales tax to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments.

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(3) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the private direct shipper's domicile state.

(4) No private direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(5) A retail liquor outlet which has entered a written agreement with a private direct shipper to accept a liquor shipment under this section may charge an additional fee not less than ten percent fee based on the total price of the liquor shipment, excluding the shipping charges, to a lawful purchaser.

(e) *Jurisdiction.* — By obtaining a private direct shipper licensee be deemed to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports.* —

(1) Licensed private direct shippers and retail liquor outlets must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The private direct shipper may annually renew its license with the commissioner by application, paying the private direct shipper license fee and providing the commissioner with a true copy of a current distillery license from the private direct shipper's domicile state.

(h) The commissioner may promulgate legislative rules to effectuate the purposes of this law.

(i) *Penalties.* —

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private direct shipper's license or retail liquor outlet's license, and the commissioner may accept payment of a penalties as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

(2) If any such distillery violates the provisions of this chapter, the commissioner may determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the

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provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive liquor from such person or to have any dealings with such person with respect thereto.

(k) *Criminal Penalties*. — A shipment of liquor directly to citizens in West Virginia from persons who do not possess a valid private direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

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§60-4-4. Purchase and resale of alcoholic liquors and ethyl alcohol by wholesale druggists.

The commission may grant to wholesale druggists license to purchase alcoholic liquors at wholesale from or through the commission for the purpose of resale within the state. Such wholesale druggists shall have the right to purchase ethyl alcohol, for nonbeverage purposes, at wholesale, and for resale to pharmacists, or druggists or drugstores employing a duly licensed pharmacist, having a regular place of business, or to other persons licensed to purchase ethyl alcohol from the commission, from distillers, manufacturers, jobbers or other wholesale druggists, whether within or without the state, and whether the seller has a permit or license from the commission to sell same, and ship and transport or cause same to be shipped and transported to their places of business, upon filing with the commission at the time of or prior to such purchase a copy of the purchase order for same, together with a statement in writing showing approximately when, and in what manner the ethyl alcohol so purchased will be shipped or transported to their places of business.

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§60-4-5. Licenses for purchase at wholesale for industrial or scientific uses; wine for sacramental purposes.

The commission may grant licenses to persons to purchase alcoholic liquors at wholesale from or through the West Virginia liquor control commission for industrial, or scientific uses, or for use in institutions as provided in article six, section five of this chapter, and may, by special permit for such fee as the commission may fix, authorize transactions at wholesale for the purchase of alcohol for scientific, chemical, mechanical or industrial purposes only; but, no license fee shall be required from institutions, departments, or agencies of the state government or any political subdivision thereof.

The commission may issue, without fee, special permits authorizing religious organizations to purchase, upon orders approved by the commission, wine for sacramental purposes.

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§60-4-6. Purchase and resale of alcoholic liquors and ethyl alcohol by retail druggists.

The commission may issue licenses to retail druggists to sell, upon prescription, and for the purposes provided for in this chapter, alcoholic liquors purchased from the commission. Any pharmacist, or retail druggist or drugstore employing a duly licensed pharmacist, having a regular place of business, may, upon filing with the commission, at the time of or prior to any purchase, a copy of the purchase order together with a written statement showing approximately when and in what manner any ethyl alcohol purchased will be shipped or transported, purchase from distillers, manufacturers, jobbers or wholesalers, whether within or without the state, and whether the seller has a permit or license to sell the same, ethyl alcohol for use in compounding or manufacturing any of the medical or other preparations mentioned in section four of article six of this chapter, and ship and transport or cause same to be shipped and transported to his place of business.

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§60-4-7. Stills used for laboratory or pharmaceutical purposes.

The commission shall license without fee a still used solely for laboratory purposes in an educational institution and a still used solely for pharmaceutical purposes.

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§60-4-7a. Individuals authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use.

The commission shall issue a license without fee authorizing an individual to manufacture ethyl alcohol solely for personal use by the individual in the production of gasohol and not for sale.

For purposes of this section, the term "gasohol" means any product suitable for use as a fuel in an internal combustion engine containing at least ten percent alcohol distilled from agricultural products or from any other nonpetroleum organic material.

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§60-4-8. Stills used by commercial chemists for laboratory purposes.

The commission shall license a still used by a commercial chemist for laboratory purposes only, and not used for the purpose of the manufacture of alcoholic liquors for resale, at a fee of $5.

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§60-4-9. Separate license for each place of business; change §60-4-10 of location.

Each separate place of business shall require a separate license. Licenses shall not be transferable but, with the approval of the commission in such form and manner as the commission may prescribe, may be amended to change the location of the business licensed.

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§60-4-10. Notice of application for license.

A person who desires to apply for a license authorized by the provisions of this chapter shall, not more than thirty nor less than ten days before the filing of formal application, give notice of his intention. He shall give notice by posting a statement of his intention in such form as the commission may require at the front door or principal entrance of the place where the business is to be conducted. He shall also publish notice, in such form as the commission may require, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which he intends to do business: Provided, however, That retail druggists desiring to sell alcoholic liquors on prescriptions shall not be subject to the provisions of this section: Provided further, That such retail druggists shall file formal application in writing with the commission and shall pay the license fee.

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§60-4-11. Time to file application and pay fee.

Not less than ten days after giving notice of his intention, a person desiring to apply for a license shall file formal application, in writing, with the commission and shall pay the license fee.

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§60-4-12. License granted or refused within fifteen days; refund of fee.

Within fifteen days after the filing of formal application for a license the commission shall either grant or refuse the license.

If the commission refuses to grant the license he shall refund the license fee.

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§60-4-13. When license to be refused.

The commission shall refuse the license if it finds that:

(1) The applicant is not a suitable person;

(2) The place to be occupied by the applicant is not a suitable place;

(3) A sufficient number of licenses have already been issued.

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§60-4-14. Annual payment of license fee; effect of failure to pay.

A person possessing a license issued under the provisions of this chapter shall pay the fee annually on or before January 1, of each year. If the license fee is not paid on that day, the license shall be automatically revoked, unless the commission shall, for good cause, grant an extension in writing for not more than ten days.

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§60-4-15. Amount of license fees.

A person to whom a license is issued under the provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

(1) Distilleries, $1,500;

(2) Wineries, $1,500;

(3) Breweries, $1,500;

(4) Bottling plants, $100;

(5) Wholesale druggists, $50;

(6) Institutions, $10;

(7) Industrial use, $50;

(8) Industrial plants producing alcohol, $250;

(9) Retail druggists, $10;

(10) Farm wineries, $50;

(11) Mini-distilleries, $50;

(12) Micro-distillers, $750.

WV Legislature

§60-4-16. Records and monthly reports required of licensee.

The commission shall prescribe records to be kept by licensees and shall require regular reports at least every thirty days of the amounts and kinds of alcoholic liquors manufactured, sold, or kept in stock under the authority of a license issued according to the provisions of this article.

Records which the licensee is required to keep shall be open at all reasonable times to inspection by the commission or its agents.

WV Legislature

§60-4-17. Rules, regulations and reports necessary for effective administration.

The commission shall have the authority to prescribe such rules and regulations and to require the reporting of such information by licensees as may be necessary for the effective administration of the provisions of this chapter.

WV Legislature

§60-4-18. Taxation, etc., of licensees by municipal corporations.

A municipal corporation shall not impose a fee or a special tax as a condition upon the exercise of a license issued under the provisions of this chapter.

WV Legislature

§60-4-19. When license revoked.

The commissioner may revoke a license issued under this article upon a finding that:

(1) The licensee is not a suitable person;

(2) The place occupied by the licensee is not a suitable place;

(3) The licensee has violated a provision of this chapter or a regulation made by the commissioner under the authority of this chapter; or

(4) The licensee has failed to comply with the spirit and intent of this chapter by encouraging intemperance, the unlawful consumption of alcoholic liquors, or otherwise.

WV Legislature

§60-4-20. Notice of and hearing on revocation; disposition of stock.

Before revoking a license issued under the authority of this chapter, the commission shall give at least ten days' notice to the licensee. Notice shall be in writing, shall state the reason for revocation and shall designate a time and place when the licensee may show cause why the license should not be revoked. Notice shall be sent by registered mail to the address for which the license was issued. The licensee may, at the time designated for the hearing, produce evidence in his behalf and be represented by counsel. On the final revocation of a license or licenses the commission shall immediately take over the stocks of liquors possessed by the licensee, and pay to the licensee the amount paid by him to the state for such stocks less the amount necessary to defray the costs incurred by the commission in the revocation proceedings.

WV Legislature

§60-4-21. Appeal.

A decision of the commission granting or revoking, or refusing to grant or to revoke a license authorized by this chapter shall be subject to judicial review upon the appeal of a licensee and applicant for a license, a resident of the community in his own behalf or in behalf of the community, or an interested party who is dissatisfied with the decision of the commission in granting, refusing to grant, revoking or refusing to revoke a license authorized by this chapter, but in any such judicial review only the legality of the decision of the commission under the Constitution and laws of this state and the United States shall be determined.

WV Legislature

§60-4-22. Wholesale representatives' licenses.

(a) A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person (1) convicted of a felony, within five years prior to his or her application, (2) convicted of a crime involving fraud, dishonesty, or deceit, within the previous five years before application, or (3) convicted of a felony violation of a state or federal liquor law within the previous five years before application; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from July 1, until June 30 next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be $100. The fee for any license granted for the remainder of any license year between January 1, and June 30 of the same calendar year shall be $50.

(b) In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he or she represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the State Capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

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(c) All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers, or processors of alcoholic liquor they represent. A licensed person may not share, divide, or split his or her salary with any person other than his or her wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

(d) All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended, or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

(e) Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding $1,000 or imprisoned in jail not exceeding 12 months, or be subject to both such fine and imprisonment in the discretion of the court.

WV Legislature

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

(a) For purposes of this section:

(1) "Exotic entertainment" means live nude dancing, nude service personnel or live nude entertainment, and "nude" means any state of undress in which male or female genitalia or female breasts are exposed.

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

(b) No person may operate any commercial facility where exotic entertainment is permitted or offered unless such person is granted a license by the commissioner to operate a facility where exotic entertainment may be offered. The provisions of this subsection apply whether or not alcoholic liquor, wine or nonalcoholic beer is legally kept, served, sold, or dispensed in a facility, or purchased for use in a facility, or permitted to be brought by others into a facility and whether or not such person holds any other license or permit issued pursuant to chapter 60 of this code.

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

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

(e) A person to whom a license is issued or renewed under the provisions of this section shall pay annually to the commissioner a license fee of $3,000. A municipal corporation wherein any such licensee is located shall issue a municipal license to any person to whom the commissioner has issued a license and may impose a license fee not in excess of the state license fee.

WV Legislature

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

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

(h) The provisions of this section do not apply to places set apart for traditional family-oriented naturist activities.

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