# WEST VIRGINIA CODE: §60-7-8G

**§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 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;

(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;

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

(v) A Class S4N permit issued under §60-7-8h 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

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§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, patrons, 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 uses 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 or S4N permit and served in an approved non-glass container into and out of, and consume the beverages within, the establishment of any other holder of a Class S4 or S4N 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 or S4N 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 or S4N permit holder if that Class S4 or S4N permit holder

grants permission, in writing, for the Class S, Class S1, Class S2, or Class S3 licensee to participate. A 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.

(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.

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

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

(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.

(i) A licensee permitted under this section is subject to all other provisions of the article under which the licensee's license is issued, as well as to 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 the operation of qualified permit holders in each private outdoor designated area. The commissioner may revoke or suspend immediately any permit 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.

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