WEST VIRGINIA CODE CHAPTER 60 ARTICLE 7

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§60-7-1. Legislative findings and purposes.

The Legislature of West Virginia, having carefully considered the provisions of section 46 of article VI of the Constitution of this state and all of the matters giving rise to the enactment thereof and having further considered the operations of private clubs as defined in this article, hereby determines and finds that such private clubs are not saloons or other public places in which the sale and consumption of intoxicating liquors are required to be prohibited by the provisions of said section 46 of article VI of said Constitution; but, to the contrary, are private places in which such sale and consumption of intoxicating liquors are Constitutionally permitted and authorized.

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§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

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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.

"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. The 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 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.

"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

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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 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, refuse to admit that person as a guest; and

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

"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

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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.

"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

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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 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.

"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 a private food truck 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) Be 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,

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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 permitted to purchase food or other items;

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

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

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

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(A) Has at least 100 members;

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

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

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

(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.

"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 manufacturers liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and

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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 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, hard cider, 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.

"Private fair and festival" means an applicant for a private club or a licensed private club

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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 provides 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.

"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

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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.

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

(A) Has at least 5,000 members;

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(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

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bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food. 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.

"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, wine, hard cider, or nonintoxicating craft beer throughout the licensed premises whether these activities are 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;

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

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

"Private nine-hole golf course" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 50 members;

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

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(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 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course'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 subdivision and all adjoining buildings and structures on the private nine-hole golf course'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 nine-hole golf course'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) Uses an age verification system approved by the commissioner; and

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

"Private tennis club" means an applicant for a private club or licensed private club licensee which:

(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;

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(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.

"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

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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.

"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

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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.

"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. The applicant shall also:

(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 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

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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 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 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;

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

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

"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

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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 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 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.

"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 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 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 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

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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, and 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, 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.

"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, tradeshows, 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. The applicant shall also:

(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

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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.

"Private food court" means an applicant who qualifies for a private club restaurant or licensed private club restaurant license 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. The applicant shall also:

(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 license who maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory the commissioner may not include 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,

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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 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 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, patrons, and guests who will be attending the private food court;

(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;

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

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

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§60-7-2a. Dual licensing permitted; conditions.

(a) A private coliseum or center may permit a private fair and festival licensee to conduct the temporary special event, authorized by that license, within, or on the private coliseum or center licensee's licensed premises, in order to create tourism opportunities that will promote brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries in this state.

(b) A private coliseum or center licensee may host a special event for a private fair and festival licensee on the licensee's licensed premises if both licensees are in good standing with the commissioner and submit to the commissioner the temporary floorplan revisions of the private coliseum or center in which the special event would be held to comprise the special event's lawful premises, which shall only include spaces in buildings or rooms of the private coliseum or center's licensed premises. By contractual agreement between the private coliseum or center licensee and the private fair and festival licensee, the parties shall agree that the private coliseum or center maintains control of its licensed premises, but for a set contracted rental time period. The private fair and festival licensee shall safely account for the ingress and egress of the stated members and guests who will be attending the special event at the licensed premises. During the contracted rental time period, the private fair and festival licensee is wholly responsible and liable for the proper sale and serving of alcoholic liquors and nonintoxicating beer in the area designated as the private fair and festival's temporary floorplan, as set forth in this section. The private fair and festival's temporary floorplan shall comprise the private fair and festival's licensed premises for the temporary special event, which is authorized for the lawful sale, service, and consumption of alcoholic liquors and nonintoxicating beer throughout the private fair and festival's licensed premises during this dually licensed temporary special event: *Provided*, That the private fair and festival's licensed premises dually shared and licensed with the private coliseum or center shall:

(1) Have facilities to prepare and serve food and alcohol;

(2) Have adequate restrooms and sufficient building facilities for the expected number of members and guests attending the event;

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

(4) Comply with health, fire, safety, and zoning requirements.

(c) There is no limit on the number of private fair and festivals that may be held at a private coliseum or center.

(d) The ability for a private outdoor designated area as defined in §8-12-26 of the code to simultaneously have multiple qualified permit holders as defined in §60-7-1 *et seq*. of the code, is expressly authorized.

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

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

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

(1) A licensee authorized pursuant to this article to sell alcoholic liquor and/or nonintoxicating beer, hard cider, or wine for on-premises consumption may use a self-pour automated system that, upon activation of a payment card by the licensee, may be operated to dispense nonintoxicating beer, hard cider, and wine to the following: (A) An employee of the licensee who is authorized by law to serve alcoholic beverages, or (B) a person whom the licensee has verified to be 21 years of age or older who displays a government-issued identification card that matches the name on the payment card. The verification that a person is 21 years of age or older shall be recorded by the licensee or an employee of the licensee.

(2) A self-pour automated system authorized by subsection (a) of this section may not dispense a serving of more than (1) 32 ounces of nonintoxicating beer, (2) 32 ounces of hard cider, or (3) 10 ounces of wine, before the payment card is reactivated by the licensee or an employee of the licensee.

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§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

(a) Application for a license to operate a private club shall be made on such form as may be prescribed by the commissioner and shall include:

(1) The name and residence of the applicant and list the same for its manager;

(2) If the applicant is an unincorporated association, the names and residence addresses of the members of its governing board;

(3) If the applicant is a corporation, the names and residence addresses of its officers and directors;

(4) The place at which the applicant will conduct its operations and whether the same is owned or leased by the applicant;

(5) The number of members of the applicant;

(6) A listed manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, being capable of operating a bona fide private club of good reputation in the community, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to: Licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application shall be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(7) The name or names of any national organizations with which the applicant is affiliated and the nature of the affiliation;

(8) The size and nature of the dining and kitchen facilities operated by applicant;

(9) Accurate and complete ownership information;

(10) An attestation that the information in the application is true and accurate; and

(11) Such other information as the commissioner may reasonably require of the applicant and manager which shall include, but not be limited to, the criminal records, if any, of each member of the applicant's governing board or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

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(b) The application shall be verified by the manager, each member of the governing board of the applicant if an unincorporated association, or, if the applicant is a corporation, by each of its officers and all members of its board of directors. The application shall be accompanied by the license fee hereinafter prescribed and by a bond of the applicant in the penal sum of $5,000 with a corporate surety authorized to transact business in the state of West Virginia, payable to the State of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

(c) Under no circumstance may any college fraternity or sorority be issued a license to operate a private club.

(d) No license to operate a private club may be issued to applicants who discriminate against any person or group of persons because of race or color of the person or group of persons.

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§60-7-4a. Notice of application for license to be given to municipal clerk or recorder; duties of clerk or recorder; consistency with zoning and community development programs; authority of commissioner.

A person intending to apply for a license to operate a private club under the provisions of this article at any location within a municipality shall file a notice of such intention with the clerk or recorder of such municipality at least ten days prior to filing an application for such a license with the commissioner. Such notice shall include the address and a general description of the premises to be licensed, the food services to be offered and the patron capacity of the club. The clerk or recorder of the municipality shall report such notice to the governing body of such municipality at its next regular meeting or special meeting to be held not sooner than two days thereafter, together with a report of the zoning administrator for such municipality, if there be any as to whether:

(1) The proposed location of said private club is consistent with the zoning ordinances as either a permitted use or a conditional use of such premises; and

(2) The premises are situate in an area designated for the use of community development block grant funds in the municipality, and, if so situate, whether the planned use of the premises is consistent with any plan adopted by the governing body for revitalization or rehabilitation of such area.

Within ten days of such report, the governing body may submit written comment upon such intended use to the commissioner, who shall deny the license upon a finding that the use of the premises is neither a permitted nor a conditional use under the zoning ordinances of such municipality and that the municipality provides within its business zones suitable alternative locations. The commissioner may deny the license upon a finding that such use is incompatible with any plan adopted by the governing body for revitalization or rehabilitation of the area wherein such premises are situate. The municipality shall not unreasonably exclude a use of the premises which is compatible with such plan or zoning ordinance solely because the use includes premises licensed under this article.

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§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

(a) Upon receipt of a completed application referred to in §60-7-4 of this code, together with the accompanying fee and bond, the commissioner shall conduct an investigation to determine the accuracy of the matters contained in such completed application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the commissioner may withhold the granting or refusal to grant the license for a period not to exceed 30 days or until the applicant has completed the conditions set forth in this article and in §60-7-4(a) of this code, all as determined by the commissioner. If it appears that the applicant is a bona fide private club of good reputation in the community in which it shall operate and that the applicant and the manager in the application or a licensee and manager in the renewal application, subject to investigation set forth in §60-7-4 of this code, have made no false statement, no material misrepresentations, no hidden ownership, or persons with an undisclosed pecuniary interest, and no omissions or failures to disclose in the application, as determined by the commissioner shall issue a license authorizing the applicant to sell alcoholic liquors as provided in §60-7-3 of this code, and otherwise shall refuse to issue the license, except that in the case of an application by a corporation or association to operate a private club in connection with:

(1) A state park, the Director of the Department of Natural Resources shall grant his or her approval before the license can be issued; or

(2) A county or municipal park, or an airport, the authority governing the park or airport shall grant its approval before the license can be issued.

A license may not be issued for a private club in any state park unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public. A license may not be issued for a private club in any county or municipal park, or an airport, unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying the application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of §60-7-13 of this code. When the refusal or denial becomes final the commissioner shall forthwith refund to the applicant his or her fees and bond accompanying the application.

(c) The license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) The license shall expire on June 30 next following the date of issue and may be renewed

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upon the same showing as required for the issuance of the initial license, together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article may not be transferable.

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§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club is $750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section is $1,000 if the private club bar or restaurant has fewer than 1,000 members; $1,000 for a private club restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in §60-7-2 of this code; $500 if the private club is a private bakery; $1,500 if the private club is a private wedding venue or barn or a private cigar shop; $2,000 if the private club is a private nine-hole golf course, private farmers market, private food truck, private college sports stadium, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; $2,500 if the private club bar or private club restaurant has 1,000 or more members; and $2,000 if the private club is a private hotel with three or fewer designated areas, a private golf club as defined in §60-7-2 of this code, a private coliseum or center as defined in §60-7-2 of this code, or a private food court as defined in §60-7-2 of this code. If the private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas is $7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas is $12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas is $17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas is $22,500. A private resort hotel that obtained the license and paid the $22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of $150 per day, per designated area.

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

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

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

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

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

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

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

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§60-7-6a. Special privilege of Class A private club licensee to operate separate but connected Class B license.

A Class A private club licensee with 1,000 or more members may, in the commissioner's discretion, operate Class B licenses for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the Class A private club premises: Provided, That each business is licensed separately and operates separate cash registers and maintains separation barriers between the different licensed operations. Failure of a licensee to license two inner-connected businesses shall subject the licensee to the penalties under this article.

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§60-7-7. Municipal fee.

Any municipality in this state is hereby authorized to levy a fee for revenue purposes only upon any licensee whose premises are situate within such municipality, which fee shall not exceed one half the amount of the license fee levied by this state under the provisions of section six of this article. Any such municipality is hereby authorized and empowered to enact and adopt ordinances necessary for the collection and enforcement of such fee.

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§60-7-8. Application for permit to hold special nonalcoholic entertainment events for persons under age twenty-one.

(a) A private club, as defined in subsection (a), section two of this article, may make application for a permit to hold nonalcoholic entertainment events for which persons under the age of twenty-one years may be admitted to the premises of such private club. Application for a permit shall be made on a form prescribed by the commissioner and a separate form shall be submitted for each such event. A private club may make application for any number of such events.

(b) Such entertainment events shall be chaperoned.

(c) Private club members may use the club during such events: Provided, That such events are held in sections of the premises which are separate and distinct from sections used by the private members and where any beer or alcoholic beverages are sold.

(d) The commissioner shall promulgate such legislative rules as may be necessary to execute and enforce this section, in accordance with the provisions of article three, chapter twenty-nine-a of this code. The commissioner shall, in such legislative rule or rules, establish criteria for determining those persons who shall act as chaperones at events authorized under the provisions of this section.

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

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

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

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

(2) Make application with the commissioner at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable non-prorated license fee of $500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event. (c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from licensed distributors that service the area in which the private fair and festival is held 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. Nonintoxicating beer or nonintoxicating craft beer may be sold and served by the drink or glass, or by the bottle or can for on-premises consumption and in sealed bottles or cans for off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set forth in §11-16-6a of this code, who manufactures the nonintoxicating beer or nonintoxicating craft beer in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized brewer or resident brewer. Prior to the start of the private fair or festival, an authorized brewer or resident brewer who agrees to offer on-premises and off-premises consumption sales of nonintoxicating beer or nonintoxicating craft beer from a booth or other facility on the private fair and festival's licensed premises must meet the requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft beer sold for off-premises consumption as set forth in §11-16-1 *et seq*. of this code. The authorized and approved brewer, resident brewer, or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

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(e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq*. of this code and §60-8A-1 *et seq*. of this code, as applicable. Wine or hard cider may be sold and served for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass and by the sealed bottle for off-premises consumption by the sealed bottle if the wine or hard cider is being sold by an authorized winery or farm winery, as set forth in §60-4-3b and §60-8A-5 of this code, who manufactures that wine or hard cider in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized winery or farm winery. An authorized winery or farm winery which agrees to offer for sale and service its wine or hard cider for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass pursuant to §60-7-1 *et seq*. of this code and for off-premises consumption sealed bottle sales from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair or festival shall meet the requirements of §60-4-3b and §60-8A-5 of this code, as applicable. The written agreement with each authorized winery or farm winery shall account for lawful sales of wine or hard cider sold for on premises or off-premises consumption as set forth in §60-8-1 *et seq*. of this code and §60-8A-1 *et seq*. of this code, as applicable. The authorized and approved winery, farm winery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private fair and festival 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 fair or festival is occurring, all in accordance with §60-3A-1 *et seq*. of this code. Liquor may be sold and served for on-premises consumption by the drink off-premises consumption by the sealed bottle if the liquor is being sold by an authorized distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures its liquor in this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-3a(c) of this code shall not apply to these sales. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor by the bottle from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this code. An authorized licensed distillery, mini-distillery, or micro-distillery which agrees to offer on-premises consumption sales of its manufactured liquor by the drink or glass from a booth or other facility on the premises of the licensed fair and festival must meet the requirements set forth and in §60-7-1 *et seq*. of this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 *et seq*. of this code. An authorized and

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approved distillery, mini-distillery, micro-distillery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

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

(h) Licensed representatives of an authorized and approved brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products and may engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery that has agreed in writing to conduct sampling, on-premises consumption sales, and off-premises consumption sales of their respective licensee's products at the private fair and festival, may discuss their respective products and engage in sampling in accordance with §11-16-6a §60-4-3a and §60-4-3b of this code; and the selling of their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor products for on-premises consumption or off-premises consumption as specified in this section. All taxes and fees must be paid on lawful sales.

(i) A license issued under this section and the licensee are 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 the circumstances of each private fair and festival require, including without limitation, the right to 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;

(j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this code, including but not limited to a dual licensing simultaneous to any other qualified permit holders as defined in §60-7-1, *et seq*. of this code.

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

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

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

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

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§60-7-8b. One-day charitable rare, antique, or vintage liquor auction; licensee fee and application; license subject to provisions of article; exceptions.

(a) The commissioner may issue a special one-day, license to a licensed private club in partnership with one or more duly organized, federally approved nonprofit corporations, associations, organizations, or entities allowing the nonprofit to conduct a charitable auction of certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on the private club licensee's licensed premises for off-premises consumption only, when raising money for athletic, charitable, educational, scientific, or religious purposes. A licensed private club may not receive more than 12 licenses under this section per year.

(b) "Auction or auctioning", for the purposes of this section, means any silent, physical act, or verbal bid auction, where the auction requires in-person bidding at a licensed private club or online internet-based auction bidding, with bidders present at the licensed private club during the nonprofit auction, through a secure internet-based application or website.

(c) *Requirements.*—

(1) The licensed private club and nonprofit shall jointly complete an application, at least 15 days prior to the event. The application may require, but is not limited to, information relating to the date, time, place, floorplan of the charitable event, and any other information as the commissioner may require. The applicants shall include with the application a written signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit. The commissioner may audit the licensed private club and nonprofit to verify the 80 percent requirement has been met.

(2) The licensed private club and nonprofit must be in good standing with the commissioner, and the applicants must receive the commissioner's approval prior to the charitable event.

(3) The licensed private club and nonprofit shall submit, and the commissioner shall review, the applicants' list of rare, antique, or vintage liquor, and the applicants shall submit documentation showing that the liquor was purchased from a licensed retail outlet in accordance with §60-3A-1 *et seq*. of this code with all taxes and fees paid. Any rare, antique, or vintage liquor with no documentation or that was not purchased in accordance with §60-3A-1 *et seq*. of this code, may be approved for auction, if all taxes and fees are paid to the commissioner in accordance with §60-3A-1 *et seq*. of this code. Any undocumented rare, antique, or vintage liquor approved for charitable auction by the commissioner must be labeled in the interest of public health and safety: "Purchase and consume at your own risk, as the authenticity or source of manufacture of this bottle has not been verified".

(4) The private club and nonprofit may not deliver, mail, or ship sealed or unsealed rare, antique, or vintage liquor bottles.

(5) The winning bidder of the auctioned rare, antique, or vintage liquor shall pay and receive

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the sealed rare, antique, or vintage liquor bottle before the conclusion of the event.

(6) The applicants shall pay a $150 nonrefundable and nonprorated fee for the license.

(d) *Exceptions*. —

(1) A nonprofit's charitable auctioning of sealed rare, antique, or vintage liquor bottles, as determined by the commissioner, is permitted on the private club's licensed premises, notwithstanding the bingo, raffle, and lottery provisions of §47-20-10, §47-21-11, and §61-10-1 *et seq*. of this code, but in compliance with the auction requirements of §19-2c-1 *et seq*. of this code;

(2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-3A-1 *et seq*. of this code to sell liquor; and

(3) The private club, upon licensure by this section, is provided a limited, one-time exception from §60-7-12(a)(1) and §60-6-8(6) of this code, to permit the licensed nonprofit to sell at auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, to permit the carrying onto, the sale of, and the carrying off of the licensed premises the approved sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are subject to all penalties for violations committed under §60-3A-1 *et seq*. of this code and §60-7-1 *et seq*. of this code.

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

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

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

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

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

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

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

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

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

(7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and 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 provide any written documentation or agreements with a food caterer to the commissioner prior to approval of the license;

(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, patrons, and guests who will be attending the private multi-vendor festival, fair, or other event;

(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

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guests;

(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;

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

(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

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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.

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§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 licensed to also 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, 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 shall 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 having dined on food or a meal, and (iii) has ordered a sealed craft cocktail growler to-go, subject to verification that the purchasing person is 21 years of age

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or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

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§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 may under a current and valid license that 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 is 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 applicable to retail sale of liquor at retail liquor outlets, shall comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and is 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 may be used 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

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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.

(g) Craft cocktail growler requirements. — A licensee licensed under this section shall prevent patrons from accessing the secure area where the filling of the craft cocktail or craft cocktail growler occurs. A licensee licensed under this section shall 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.

(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. All labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(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 may only be used one-time, for one filling, and shall be discarded after the one-time use.

(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 shall 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) of this code may use a premixed beverage meeting the requirements of that section and is also subject to the requirements of this section for a craft cocktail growler.

(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 shall 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 who dined in-person on food or a meal and has ordered and a sealed craft cocktail growler-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 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.

(l) Rules. — The commissioner, in consultation with the Bureau for Public Health, may 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.

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§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery license nonprorated, nonrefundable annual fee is $200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner: *Provided*, That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements*. —

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq*. of the code for nonintoxicating beer or nonintoxicating craft beer.

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

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manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal: *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than $20 per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed $20.

(e) *Craft Cocktail Growler Delivery Requirements*. —

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall file each delivery person’s name, driver’s license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales

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and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

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

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

(2) Any mobile ordering application or web-based software used shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

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

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(g) *Private Cocktail Delivery Permit*. —

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

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(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement*. —

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

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

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

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§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 §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

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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

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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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§60-7-8h. Special permit for a qualified non-profit 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 S4N, 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 by qualified non-profit corporate entities organized pursuant to §31E-1-1 *et seq*. of this code. Each Class S4N permittee may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) Definitions:

Except as set forth in this section, the definitions of §60-7-8g of this code also apply to this section.

"Qualified non-profit permit holder" means a non-profit corporate entity organized pursuant to §31E-1-1 *et seq*. of this code that elects to operate its events solely within a private outdoor designated area, and who has applied and been approved for a Class S4N special permit pursuant to §60-7-1 *et seq*. of this code.

(c) To be eligible for the special S4N permit authorized by subsection (a) of this section, the qualified non-profit permit holder shall:

(1) Have an approved outdoor location that operates solely in a private outdoor designated area created by a municipal ordinance as set forth in §8-12-26 of this code, provide the commissioner a copy of the certified ordinance from the municipality, and operate only on dates designated within the dates of operation for the private outdoor designated area;

(2) Apply to the commissioner for the special S4N permit prior to operating in an approved private outdoor designated area on an application provided by the commissioner which will provide verification of non-profit corporate status with the West Virginia Secretary of State;

(3) Pay a one-time, nonrefundable non-prorated annual special permit fee of $1,500 to the commissioner: *Provided*, That in the first year following the effective date of this section, this special permit fee may be pro-rated for the period between effective date and June 30 of that year. The one-time permit covers as many approved events that can be held during the permit annual time period;

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

(5) Provide the dates, days, and hours of operation of all events to be held in the private outdoor designated area between July 1 of the application year and June 30 of the year following the application year within the dates of operation of the private outdoor designated area within that timeframe: *Provided*, That the S4N permit applicant may list future dates

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within the permit annual time period as to be determined so long as the qualified non-profit permit holder notifies the commissioner of the specific future event dates not later than 60 days prior to the event.

(d) The commissioner shall enforce any violations of §11-16-1 *et seq*. and §60-1-1 *et seq*. of this code committed by qualified non-profit permit holders against their permit and their Class A, Class B, Class S, Class S1, Class S2 or Class S3 license.

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§60-7-9.

Repealed.

Acts, 1986 Reg. Sess., Ch. 153.

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§60-7-10. Duties and powers of commissioner.

The commissioner is hereby authorized:

(a) To enforce the provisions of this article.

(b) To enter the premises of any licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of said licensee with the provisions of this article and any rules and regulations promulgated by the commissioner pursuant to the provisions of this article.

(c) To promulgate such reasonable rules and regulations as may be necessary for the execution and enforcement of the provisions of this article, which may include, but shall not be limited to, the hours during which licensees may sell alcoholic liquors, and the use, handling, service and sale of such alcoholic liquors. Such rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of the code in like manner as if said article three of said chapter twenty-nine-a were set forth in extenso in this subdivision.

(d) To issue subpoenas and subpoenas duces tecum for the purposes of conducting hearings under the provisions of section thirteen of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if said section one were set forth in extenso in this subdivision.

The authority granted in subdivisions (a), (b), and (d) of this section may also be exercised by the duly authorized agents of the commissioner.

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§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions.

(a)(1) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia Alcohol Beverage Control Commissioner at prices established by the commissioner for sales of the alcoholic liquors to the public generally or from any retail licensee licensed under the provisions of article three-a of this chapter, except that the licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices the distributors sell the wines to retailers licensed pursuant to said article.

(2) A licensee may by contract approved by the commissioner receive deliveries of alcoholic liquor from a retail liquor store, and the provisions of sections twelve and thirteen, article six of this chapter shall not apply to the transportation of that alcoholic liquor.

(b) In all reports filed under section sixteen, article fifteen, chapter eleven of this code, retail licensees licensed under the provisions of article three-a of this chapter shall separately identify the amount of sales tax on sales of liquor to licensees in the manner required by the Tax Commissioner.

(c) Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this code to the contrary, the amount of the sales taxes collected by the Tax Commissioner shall be deposited in a revolving fund account in the State Treasurer's office, designated the "drunk driving prevention fund", and administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

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§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee, or member thereof, on such licensee's premises to:

(1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice. A private resort hotel holding a license issued pursuant to §60-7-1 *et seq*. of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 *et seq*. and §29-22C-1 *et seq*., or §29-25-1 *et seq*. of this code, during hours of operation authorized by §29-22A-1 *et seq*. and §29-22C-1 *et seq*., or §29-25-1 *et seq*. of this code.

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors, for or to any person known to be considered legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine, or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays, or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;

(7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues-paying member in good standing of the private club or a guest of the member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption, except as authorized by the commissioner;

(10)(A) Employ any person who is younger than 16 years of age in a position where the

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primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;

(B) Employ any person who is between 16 years of age and younger than 21 years of age who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.

(c) Any person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

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§60-7-12a. Unlawful acts by persons.

(a) A person under the age of twenty-one years may not order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Any person under the age of twenty-one years who violates any provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed $500 or imprisoned in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, and, in addition to such fine and imprisonment, may, for the first offense, be placed on probation for a period not to exceed one year: Provided, That nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, wine, or alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase nonintoxicating beer, wine, or alcoholic liquors from a licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed $500 or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one, any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee, is guilty of a misdemeanor and, shall, upon conviction thereof, be fined not more than $500, or imprisoned in the county jail not more than ten days, or both fined and imprisoned.

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§60-7-12b. Liability of intoxicated persons; liability of persons or licensees for knowingly unlawful sales; rebuttable presumptions and exceptions.

(a) Notwithstanding any other provision of this article to the contrary, a licensee or person acting on the licensee's behalf who sells, furnishes, or serves an alcoholic beverage to a person is not thereby liable in a civil action for damages for injury, death, or damage caused by or resulting from the impairment or intoxication of the person who was furnished the alcoholic beverage, including injury or death to other individuals, unless either of the following circumstances apply:

(1) The licensee or person acting on the licensee's behalf knowingly sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age; or

(2) The licensee or person acting on the licensee's behalf knowingly sells, furnishes, or serves alcoholic beverages to a person who was visibly intoxicated at the time the alcoholic beverage was furnished.

(b) Where either of the circumstances set forth in §60-7-12b(a) of this code are met by a preponderance of the evidence, a person or licensee may become liable for injury or damage caused by or resulting from the intoxication of the person when the sale, furnishing, or serving of alcoholic beverages to the person is the proximate cause of the injury or damage.

(c) In determining whether the sale, furnishing, or serving of alcoholic beverages to a person not of legal drinking age is done knowingly, as provided in §60-7-12b(a)(1) of this code, a rebuttable presumption that the alcoholic beverages were not sold, furnished, or served knowingly exists if:

(1) The person selling, furnishing, or serving alcoholic beverages has installed a transaction scan device on its licensed premises and can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom alcoholic beverages have been furnished; or,

(2) The person selling, furnishing, or serving alcoholic beverages can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom an alcoholic beverage is sold by providing evidence:

(A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom an alcoholic beverage will be sold, furnished, or given away;

(B) That it has communicated this policy to each employee, servant, or agent; and

(C) That it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or provision without charge of any alcoholic beverage and that it has taken corrective action for any discovered noncompliance with this policy.

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(d) For purposes of this section, an intoxicated person of lawful drinking age operating a motor vehicle, an executor or administrator of the intoxicated motor vehicle operator's estate, any person voluntarily riding in a motor vehicle operated by a person known to be intoxicated, or an executor or administrator of any person voluntarily riding in a motor vehicle operated by a person known to be intoxicated, do not have a private cause of action against any licensee, person acting on the licensee's behalf, or owner or lessor of any building of a licensee, for injuries to his or her person or property arising from the actions of the intoxicated driver.

(e) For any cause of action brought pursuant to this section against a licensee or person acting on the licensee's behalf that maintains liquor liability insurance in an amount not less than $1 million per occurrence and at least $2 million in the aggregate, a verdict of past medical expenses is limited to $1 million, and an award of punitive damages may not exceed two times the amount of compensatory damages awarded.

(f) For purposes of this section, these terms are defined as follows:

"Alcoholic beverage" includes alcohol, beer, including nonintoxicating beer and nonintoxicating craft beer, wine, spirits and any other liquid or solid capable of being used as a beverage.

"Knowing" or "knowingly" means knew or should have known under a totality of the circumstances.

"Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other government-issued identity card.

"Visible intoxication" or "visibly intoxicated" means actual evidence of a person's action or series of actions that present objective signs of intoxication. A person's blood alcohol content or the number of alcoholic beverages a person consumes do not constitute prima facie evidence to establish that a person is visibly intoxicated within the meaning of this section but may be admissible as relevant evidence of the person's intoxication.

(g) Notwithstanding any other effective date to the contrary, the amendments to this article, enacted during the 2025 regular legislative session, apply to all cases filed on or after August 1, 2025.

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§60-7-12c. Liability of owners or lessors for gross negligence.

(a) A person, and an executor or administrator of the person's estate, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person do not have a private cause of action against an owner or lessor who rents their building or premises to a licensee or person acting on the licensee's behalf against whom a private cause of action may be brought under §60-7-12b of this code, except when:

(1) The owner and the licensee are the same person, and the licensee violated a provision of §60-7-12b of this code; or

(2) There is clear and convincing evidence that the owner or lessor acted willfully, wantonly, or with gross negligence with respect to the renting of the owner or lessor's building or premises to a licensee or person acting on a licensee's behalf against whom a private cause of action has been brought.

(b) For any cause of action brought under this section in which the trier of fact has determined that punitive damages are to be awarded, the limitations on punitive damages provided in §55-7-29 of this code apply.

(c) Notwithstanding any other effective date to the contrary, the amendments to this article, enacted during the 2025 regular legislative session, apply to all cases filed on or after August 1, 2025.

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§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of §11-16-1 *et seq*. of this code or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

(1) Revoke the licensee's license;

(2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed 12 months; and

(4) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is hereby continued. All moneys collected, received, and deposited in the Alcohol Beverage Control Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, nonintoxicating beer as set forth in §11-16-1 *et seq*. of this code, hemp-derived cannabinoids as set forth in §19-12E-12 of this code, and kratom as set forth in §19-12F-1 *et seq*. of this code. The Alcohol Beverage Control Enforcement Fund shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in excess of $200,000 shall be transferred to the General Revenue Fund.

(c) In addition to the grounds for revocation, suspension, or other sanction of a license set forth in §60-7-13(a) of this code, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer, or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession, or distribution of narcotics or controlled substances, is mandatory grounds for revocation of the licensee's license for a period of at least one year.

(d) A licensee shall notify, in a timely manner, emergency medical services or law enforcement if a licensee knows, or has reason to know, of a life-threatening medical emergency occurring on the licensed premises. In addition to the grounds for revocation, suspension, or other sanction of a license set forth in this section, the commissioner may revoke, suspend, or otherwise sanction a licensee for failing to comply with the provisions of

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this section.

(e) If a life-threatening medical emergency occurs on a licensee's private premises requiring notification of emergency medical services or law enforcement under §60-7-13(d) of this code, the licensee shall notify the Alcohol Beverage Control Administration within 48 hours of the emergency’s occurrence. The commissioner may revoke, suspend, or otherwise sanction a licensee for failing to comply with the 48-hour notification requirement.

(f) As used in this section, a life-threatening medical emergency includes, but is not limited to, respiratory distress or cessation of breathing, severe chest pains, shock, uncontrolled bleeding, poisoning, prolonged unconsciousness, overdose, any complaint or observation which indicates significant head or spinal injury, and life-threatening physical injury caused by a crime of violence against the person occupying or emanating from the licensed premises.

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§60-7-13a. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may not revoke or suspend a license issued pursuant to this article or impose civil penalties authorized under this article unless and until a hearing is held after at least ten days' notice to the licensee of the time and place of the hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for the proposed contemplated action, and which is served upon the licensee as notices under the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested, to the address for which license was issued. At the time and place, designated in the notice, the licensee has the right to appear and produce evidence in his or her behalf, and to be represented by counsel: Provided, That the commissioner may forthwith suspend the license when the commissioner believes the public safety will be adversely affected by the licensee's continued operation.

(b) The commissioner may summon witnesses in the hearing before him or her, and fees of witnesses summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. The fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed $150 per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. Moneys so assessed shall be transferred to the Alcohol Beverage Control Enforcement Fund created by section thirteen of this article.

(c) If, at the request of the licensee or on his or her motion, the hearing is continued and does not take place on the day fixed by the commissioner in the notice of hearing, then the licensee's license may be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of the license, upon hearing before the commissioner, the licensee is not permitted to sell alcoholic liquor or nonintoxicating beer pending an appeal as provided by this article. Any person continuing to sell alcoholic liquor or nonintoxicating beer after his or her license has been suspended or revoked, as provided in this section, is guilty of a misdemeanor and, shall be punished as provided in section twelve of this article.

(d) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, the action of the commissioner in revoking, suspending, sanctioning or refusing a license is subject to review by the circuit court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: Provided, That in all other respects, such review shall be conducted in the manner provided in chapter twenty-nine-a of this code. The petition for review must be filed with the circuit court within thirty days following entry of the final order of revocation, suspension, sanction or refusal issued by the commissioner. A licensee obtaining an order for

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the review is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to the matter to the circuit court. An application to the Supreme Court of Appeals of West Virginia for a writ of error from any final order of the circuit court in the matter shall be made within thirty days from and after the entry of the final circuit court order.

(e) All such hearings, upon notice to show cause why license should be revoked, suspended, sanctioned or refused, before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, unless otherwise provided by the commissioner in the notice of hearing. When the hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of the hearing.

(f) Whenever any licensee has been convicted of an offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, or nonintoxicating beer, and the conviction has become final, the clerk of the court in which the licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if the clerk has knowledge that the person convicted is a licensee, together with the certification of the clerk that the conviction is final. The commissioner shall report violations of any of the provisions of section twelve or twelve-a of this article to the prosecuting attorney of the county in which the licensed premises is located.

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§60-7-14. Forfeiture of bond; collection.

On conviction of a violation of any provision of this article or upon the revocation of a license in accordance with section thirteen of this article, which conviction or revocation has become final, the licensee or former licensee, as the case may be, shall forfeit his bond required by section four of this article. The penal sum of said bond shall forthwith be paid to the State Treasurer to be credited to the General Revenue Fund of this state. Such sum may be collected by an action at law or other appropriate remedy.

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§60-7-15. License for the sale of nonintoxicating beer.

Notwithstanding any other provision of this code to the contrary, no licensee shall be prohibited from obtaining a license for the sale of nonintoxicating beer under the provisions of article sixteen of chapter eleven of this code because such licensee sells alcoholic liquors, permits the consumption of alcoholic liquor on his premises, or is the holder of a federal tax stamp permitting the sale of such alcoholic liquor.

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§60-7-16. Severability.

If any article, section, subsection, provision, clause or phrase of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, subsections, provisions, clauses or phrases or applications of the chapter, and to this end each and every article, section, subsection, provision, clause and phrase of this chapter is declared to be severable. The Legislature hereby declares that it would have enacted the remaining articles, sections, subsections, provisions, clauses and phrases of this chapter even if it had known that any articles, sections, subsections, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this chapter even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

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§60-7-17. Repealer.

[Repealed.]

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