WEST VIRGINIA CODE CHAPTER 60

WV Legislature

§60-1-1. Purpose of chapter; declaration of legislative findings, policy and intent.

The purpose of this chapter is to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment; and it is hereby found by the Legislature and declared to be the public policy of this state to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of alcoholic liquors and at the same time to assure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this state. To these ends the police power of this state is pledged to the sound control and the temperate use of alcoholic liquors. In order to further promote and foster the hereinabove policy of the Legislature, the provisions of this chapter and of the rules and regulations promulgated pursuant thereto shall be construed so as to accomplish and effectuate these stated purposes.

WV Legislature

§60-1-2. Applicability of chapter.

A person shall not sell, possess for sale, transport, or distribute alcoholic liquors in this state except in accordance with the provisions of this chapter.

WV Legislature

§60-1-3. Restrictions on sale, manufacture or consumption; exceptions.

Subject to the provisions of this chapter, alcoholic liquors, in this state:

(1) Shall be sold only in sealed packages, except by organizations licensed under authority of article seven of this chapter.

(2) Shall not be sold for consumption on the premises where sold, except as authorized by article seven of this chapter.

(3) Shall be manufactured only by persons licensed under the provisions of this chapter.

(4) Shall not be consumed or sold for consumption in a public place.

WV Legislature

§60-1-3a. Off-premises sales not required to be bagged.

Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

WV Legislature

§60-1-4. Sales to be made by or through West Virginia Alcohol Beverage Control Commissioner.

Alcoholic liquors shall be sold at wholesale and retail in this state only by or through the West Virginia Alcohol Beverage Control Commissioner or retail agencies established by him or any predecessor commissioners or commission, except as authorized by articles seven and eight of this chapter.

WV Legislature

§60-1-5. Definitions.

For the purposes of this chapter:

(1) “Alcohol” means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

(2) “Alcoholic liquor” includes alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

(3) “An agency” means a drugstore, grocery store, or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commission.

(4) “Beer” means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

(5) “Brewery” means an establishment where beer is manufactured or in any way prepared.

(6) “Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

(7) “Department” means the organization through which the commission exercises powers imposed upon it by this chapter.

(8) “Distillery” means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

(9) “Intoxicated” means a person’s faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.

(10) “Manager” means an individual who is the applicant’s or licensee’s on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

(11) “Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

WV Legislature

(12) “Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

(13) “Nonintoxicating beer” means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by §11-16-2 of this code.

(14) “Original package” means any closed or sealed container or receptacle used for holding alcoholic liquor.

(15) “Person” means an individual, firm, partnership, limited partnership, corporation, or voluntary association.

(16) “Powdered alcohol” means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.

(17) “Public place” means any place, building, or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement: *Provided,* That the term “public place” shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises: *Provided, however,* That the term “public place” shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this chapter to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term “public place” shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of §60-8-3 of this code, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

(18) “Sale” means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.

(19) “Selling” includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

(20) “Spirits” means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

www.Legislature

(21) “State liquor store” means a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

(22) “Wine” means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

(23) “Winery” means an establishment where wine is manufactured or in any way prepared.

WV Legislature

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter “Farm winery” means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

WV Legislature

§60-1-5b. Mini-distilleries defined.

For the purpose of this chapter: “Mini-distillery” means an establishment where in any year no more than 50,000 gallons of alcoholic liquor is manufactured with no less than 25% of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than 25% of raw agricultural products originating from any source outside this state: *Provided,* That the maximum allotted production amounts shall not exceed the annual incremental production limitations provided for pursuant to section three-a of this article.

WV Legislature

§60-1-5c. Alternating wine proprietorships; requirements and limitations.

(a) Notwithstanding the provisions of §60-1-5 of this code, a licensed winery or farm winery may be a party to an alternating wine proprietorship agreement subject to the provisions of this section. As used in this section, "alternating wine proprietorship agreement" means an agreement between a licensed winery or farm winery and a farm entity which allows the farm entity to use the premises of the licensed farm winery to produce wine.

(b) For an alternating wine proprietorship agreement to be lawful:

(1) The farm winery and the farm entity must be in compliance with applicable state laws and rules promulgated thereunder;

(2) The agreement must be between a licensed winery or farm winery and a farm entity located and operating in this state;

(3) The farm entity must produce agricultural products containing sugar as certified by the Agriculture Commissioner and required by law;

(4) Wines produced by the parties must be maintained in separate bonded areas and shall not be comingled;

(5) The farm entity participating in the agreement must separately meet all federal and state requirements for a winery or farm winery;

(6) The farm entity party to the agreement may not produce more than 50,000 gallons of wine and nonfortified dessert wine;

(7) Wine produced by the farm entity party to an agreement must be produced exclusively by natural fermentation;

(8) If port, sherry, or madeira wines are produced by the farm entity party to the agreement, a minimum of 25 percent of the agricultural products used to make the wine must be produced on the farm entity’s property and no more than 25 percent of the agricultural products used may come from an out-of-state source; and

(9) Port, sherry, or madeira wine produced by a party to an alternating wine proprietorship agreement may not exceed 22 percent alcohol by volume and must be matured in wooden barrels or casks.

(c) The commissioner shall propose rules for promulgation in accordance with §29A-3-1 et seq. of this code necessary to effectuate the provisions of this section.

WV Legislature

§60-1-5d Micro-distilleries defined.

For the purposes of Chapter 60 of this code “Micro-distillery” means an establishment where in any one year no more than 10,000 gallons of alcoholic liquor is manufactured and no more than 25% of raw agricultural products used in production may originate from outside this state is used in distillation.

WV Legislature

§60-1-6. How chapter cited.

This chapter may be cited as the "Alcohol Beverage Control Act".

WV Legislature

§60-1-7. Applicability of chapter to nonintoxicating beer.

The provisions of this chapter do not apply to nonintoxicating beer except as is otherwise specifically provided.

WV Legislature

§60-2-1. Office created; powers and functions generally; office of liquor control commissioner abolished and powers transferred.

To accomplish the purposes of this chapter there is hereby created the office of West Virginia Alcohol Beverage Control Commissioner. The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by the West Virginia liquor control commissioner. The office of the West Virginia liquor control commissioner is hereby abolished. Wherever in this chapter and elsewhere in law reference is made to the West Virginia liquor control commissioner or liquor control commission such reference shall henceforth be construed and understood to mean the West Virginia Alcohol Beverage Control Commissioner. All parts and provisions of this chapter rendered meaningless and inapplicable by the provisions hereof are hereby modified and amended so that the provisions of this chapter will be consistent and harmonious in their entirety.

WV Legislature

§60-2-2. Appointment of commissioner.

The commissioner shall be appointed by the Governor, with the advice and consent of the Senate, and shall devote his entire time to the duties of his office.

WV Legislature

§60-2-3. Term of office; vacancy.

The commissioner shall be appointed for a term of four years and any appointment to fill a vacancy shall be for the unexpired term.

WV Legislature

§60-2-4.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-2-5.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-2-6.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-2-7. Oath and bond.

Before entering upon the duties of the office, the commissioner shall take and subscribe to the oath prescribed by section 5, article IV, of the Constitution of this state, and shall give bond in the penalty of $25,000, to be approved by the Governor and conditioned upon the faithful performance of the duties of the office and the accounting for and payment into the treasury of all moneys coming into the commissioner's custody by virtue of the office. The bond and oath shall be filed with the Secretary of State.

WV Legislature

§60-2-8.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-2-9. Salary and expenses.

The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code, and shall be paid actual and necessary traveling expenses incurred in performance of the official duties of the office.

WV Legislature

§60-2-10.

Repealed.

Acts, 2003 Reg. Sess., Ch. 69.

WV Legislature

§60-2-11. Powers and duties.

The Alcohol Beverage Control Commissioner shall have the following powers and duties and any and all other powers and duties reasonably necessary and convenient for the purpose of this chapter:

(1) Exercise general supervision of, and make rules and regulations for, the management of his or her agency;

(2) Sign and execute in the name of the commissioner any contract or agreement authorized by this chapter;

(3) Supervise the fiscal affairs and responsibilities of the agency;

(4) With the approval of the Governor, acquire title to and purchase real estate containing 12.168 acres situate on River Road in the Hub Industrial Park, Nitro, Putnam County, which real estate is improved by block and steel building containing approximately one hundred fifty thousand (150,000) square feet, formerly known as the Heck's warehouse, for a sale price not to exceed $2,250,000;

(5) With the approval of the Governor and the board of public works, sell, in part or in whole, the real estate containing 12.168 acres and a warehouse situate on River Road in the Hub Industrial Park, Nitro, Putnam County, for a sale price of at least the appraised fair market value and upon terms the commissioner determines to be in the best interest of the State of West Virginia;

(6) With the approval of the Governor and the board of public works, and upon the sale of real estate containing 12.168 acres and a warehouse situate on River Road in the Hub Industrial Park, Nitro, Putnam County, acquire title to and purchase, upon terms the commissioner determines to be in the best interest of the State of West Virginia, real estate containing a replacement warehouse of a size and in a location that the commissioner determines meets the storage needs of the agency;

(7) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into and assume responsibility for the custody and preservation of all papers and documents pertaining to the commissioner;

(8) Purchase or lease as provided by law all equipment necessary for the conduct of the agency;

(9) Report to the Governor each year all information relative to the operation and functions of the agency. The commissioner shall make such other reports and recommendations as may be required by the Governor;

(10) Exercise any other power that may be necessary or proper for the orderly conduct of the business and the effective discharge of the duties of the commissioner; and

WVLegislature

(11) Invoke any legal or equitable remedies for the enforcement of the orders of the commissioner or the provisions of this chapter.

WV Legislature

§60-2-12. Assistants and employees.

The commission shall appoint or employ such assistants and employees as may be necessary to the efficient operation of the department and fix their salaries. All assistants and employees shall be appointed or employed to serve during the will and pleasure of the commission.

WV Legislature

§60-2-13. Bonds of employees.

The commission shall require every employee who collects fees or handles funds, or who has custody of equipment, supplies, and other property belonging to the state, to take the oath prescribed by section 5, article IV of the state Constitution; and the commission shall require to be furnished by every employee, or shall itself obtain, a bond, insurance policy, indemnity contract, or other contract, protecting and indemnifying the state against any and all loss or damage that may be occasioned by the failure of the employee faithfully to perform the duties pertaining to his employment, and to account for, pay over and deliver to the proper officer or agent of the commission or state all moneys and other property which may come into his custody or under his control by virtue of his employment. Such bond, insurance policy, indemnity contract, or other contract, shall be in such form, and in such sum, and with such security, as may be prescribed or approved by the commission, and may cover any one employee or any number of employees. The premiums for all such bonds, insurance policies, indemnity contracts, or other contracts, shall be paid by the commission.

WV Legislature

§60-2-14. Authority to grant and revoke licenses.

The commission shall have the authority to grant and revoke licenses as provided in article four of this chapter.

WV Legislature

§60-2-15. Regulation of advertising.

The commission shall prescribe rules governing the advertising of alcoholic liquors in this state. The rules may only prohibit advertising that encourages intemperance, induces minors to purchase, or tends to deceive or misrepresent.

WV Legislature

§60-2-16. Rules and regulations.

The commission shall have the power to prescribe rules and regulations to give effect to the powers vested in it by this chapter. Rules and regulations shall be recorded in a book especially kept for that purpose, and in its discretion may be published for general circulation. All other records and entries necessary to show the official conduct of the commission shall be preserved and shall be public records and open for inspection during business hours.

WV Legislature

§60-2-17. Powers and duties exercised by employees.

All powers and duties vested in the commission, except the power to sign contracts, may be exercised by the appointees or employees of the commission under its direction; but the commission shall be responsible for their acts.

WV Legislature

§60-2-17a. Law enforcement cooperation.

In addition to the assistance of law enforcement provided under §15-2-12 of this code, the commissioner may obtain assistance in the enforcement of §11-16-1 et seq. and §60-1-1 et seq. of this code from county or municipal law-enforcement agencies by making a written request therefor. The assistance authorized by this section is limited only to accompanying the commissioner and his or her agents and may not be unreasonably withheld. Any law-enforcement officer acting pursuant to this section may further act upon crimes committed in his or her presence: Provided, That any officer so acting must be within his or her geographic jurisdiction, and nothing in this section authorizes any officer to act outside of the scope of his or her geographic jurisdiction.

WV Legislature

§60-2-17b. Wine and liquor operating fund established; operations fee; fund issues.

(a) As of July 1, 2019, there is an annual nonrefundable and nonprorated operational fee of $100 for all distilleries, mini-distilleries, wineries, farm wineries, Class A retail licensees, Class B retail licensees, private clubs, private wine retailers, wine specialty shops, wine restaurants, private wine spas, private wine bed and breakfasts, wine suppliers, and wine distributors which shall be paid on or before July 1, 2019, and every July 1 thereafter. All fees collected by the commissioner pursuant to this section shall be deposited in a special revenue account in the State Treasury, hereby created, to be known as the Wine and Liquor Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this chapter, as appropriated by law.

(b) Licensees holding multiple licenses for nonintoxicating beer, nonintoxicating craft beer, wine, or liquor shall be subject to paying only one operations fee of $100 under this chapter and under §11-16-10(d) of this code.

WV Legislature

§60-2-18. Hearings and proceedings.

In all hearings and proceedings before the commission, the evidence of witnesses and the production of documentary evidence may be required. Summons may be issued by it for appearance at any designated place of hearing. In case of disobedience to a summons or other process, the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, bonds and documents. Upon proper showing, the court shall issue an order requiring witnesses to appear before the commission, produce all books and papers, and give evidence touching the matter in question. Any person failing to obey the order may be punished by the court as for contempt. A claim that evidence may tend to incriminate the person giving the evidence shall not excuse him from testifying, but he shall not be prosecuted for any offense concerning which he is compelled to testify.

WV Legislature

§60-2-19. Legal services.

The Attorney General and the prosecuting attorneys of the several counties shall render to the commission, without additional compensation, such legal services as it may require of them in the discharge of its duties under the provisions of this chapter.

WV Legislature

§60-2-20. Civil responsibility.

The members of the commission shall not be civilly responsible for any act done or omitted in good faith in the discharge of duties imposed upon them by this chapter.

WV Legislature

§60-2-21. Audit.

At least every five fiscal years, the Legislative Auditor shall audit the affairs of the West Virginia Alcohol Beverage Control Commissioner and report the results of the audit to the Governor. The cost of the audit shall be paid from the operating fund.

WV Legislature

§60-2-22. Authority to utilize scanner technology in sales; authority to execute contracts relating thereto.

(a) The commissioner may, pursuant to section eleven of this article, authorize and establish standards for the use of scanner technology for the verification of age of purchasers of alcoholic beverages and wine as provided in article eight of this chapter, and nonintoxicating beer as provided for in article sixteen, chapter eleven of this code. Any scanner technology may not be used for the collection of personal identifiable information of any purchaser, which includes, but is limited to, drivers license number, social security number or other descriptive information contained on the license, other than the age of the purchaser.

(b) In addition to the commissioner's powers set forth in section eleven of this article, the commissioner may sign and execute in the name of the office of Alcohol Beverage Control Commissioner one or more contracts or agreements pertaining to the sale or licensing and promotion of proprietary scanner technology by the commissioner, or his or her designated contractual partner, to any interested person, upon terms the commissioner believes to be in the best interests of this state, and to amend, extend or terminate any contract or agreement: Provided, That all contracts are subject to the review process contained in section thirteen, article three, chapter five-a of this chapter.

(c) "Scanner technology" includes any device that uses technology intended to control the access of minors to alcohol and tobacco products and which is capable of:

(1) Capturing the information from a bar code or magnetic strip on a driver's license or identification card issued by the Division of Motor Vehicles;

(2) Producing a declaration of age in print form and storing a record of the event in memory;

(3) Producing an audible, visual and printed result;

(4) Reporting a history of the events, including the ability to transfer the data for archiving and database development purposes; and

(5) Storing at least one thousand events at any time before data is transferred.

(d) Moneys derived from the sale, licensing and promotion of the proprietary scanner technology shall be deposited in a special account in the state Treasury to be known as the "Scanner Technology Fund." Expenditures from the fund shall be for the maintenance and development of the proprietary scanner technology described in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2004, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

WV Legislature

§60-3-1. Sales at retail and wholesale.

The sale of alcoholic liquors at wholesale and retail in this state shall be a state monopoly, except for retail sales made by authority of article six, section two and article seven of this chapter. Alcoholic liquors shall be sold at retail only through the state stores, agencies of the West Virginia Alcohol Beverage Control Commissioner, and may be sold by private clubs holding a license issued under the provisions of article seven of this chapter.

The commissioner may sell such liquors at wholesale to persons licensed to purchase at wholesale as provided in this chapter and wine may be sold by farm wineries licensed under and subject to the provisions of this chapter.

(NOTE: The preceding version of §60-3-1 is in the form of H.B. 935 enacted March 5, 1981, relating to making certain exemptions from the state monopoly on the sale of wine. Specifically, section two, article six of this chapter relating to the manufacture and sale of cider and the provision on farm wineries licensed under chapter sixty are the exemptions. See the following version of this same section enacted in a different form. For 1981 Acts, see chapter 218.)

§60-3-1. Sales at retail and wholesale.

The sale of alcoholic liquors at wholesale and retail in this state is a state monopoly, except for sales made by authority of articles seven and eight of this chapter.

(NOTE: The preceding version of §60-3-1 is in the form of H.B. 1111 enacted March 26, 1981, mainly removing the state monopoly on the sale of wine. See above the first version of this same section enacted in a different form. For 1981 Acts, see chapter 217.)

WV Legislature

§60-3-2. Establishment and discontinuance of stores and agencies; location.

The commission shall establish state stores and agencies at places throughout the state so as to serve adequately and reasonably the demand for the sale at retail of alcoholic liquors, subject only to the limitations imposed by article five of this chapter. It may discontinue a store or agency when in its opinion it is advisable to do so.

A store or agency shall not be located in the immediate vicinity of a church or school.

WV Legislature

§60-3-3. Warehouses.

The commission shall establish and manage as many warehouses as may be necessary, but not more than four, for the storage of alcoholic liquors and the supply of state stores and agencies.

WV Legislature

§60-3-4. Managers and employees of stores.

The commission shall appoint a manager for and assign employees to each state store. The manager shall be responsible to the commission for the conduct and operation of the store.

WV Legislature

§60-3-5. Rules and regulations to govern stores and agencies.

The commission shall issue appropriate rules and regulations to govern the conduct of state stores and agencies.

WV Legislature

§60-3-6. Agencies to procure stocks; sales at retail.

A state agency shall procure stocks of alcoholic liquor for sale at retail only from the commission. Sales at retail in agencies shall be made in the same manner as sales in state stores.

WV Legislature

§60-3-7. Compensation and bond of agent.

Agents shall be compensated based upon the average monthly gross revenues of the agency or store, excluding sales tax thereon. The amount of compensation shall be computed and paid as follows:

(1) For gross revenues up to $3,000 per month, $400 compensation per month.

(2) For gross revenues of not less than #3,000 nor more than $6,000 per month, ten percent of all gross revenues between said $3,000 and $6,000, which shall be in addition to the compensation as provided in subdivision (1) hereinabove.

(3) For gross revenues of not less than $6,000 nor more than $8,000 per month, eight percent of all gross revenues between said $6,000 and $8,000, which shall be in addition to the compensation as provided in subdivisions (1) and (2) hereinabove.

(4) For gross revenues of not less than $8,000 nor more than $10,000 per month, six percent of all gross revenues between said $8,000 and $10,000, which shall be in addition to the compensation as provided in subdivisions (1), (2) and (3) hereinabove.

(5) For gross revenues over $10,000 per month, four percent of all gross revenues over said $10,000 amount, which shall be in addition to the compensation as provided in subdivisions (1), (2), (3) and (4) hereinabove.

The agent shall pay for utilities, renovations and operating expenses of the agency from the compensation set forth herein.

Each agent shall give bond in an amount fixed by the commissioner conditioned upon the faithful observance of the provisions of this chapter, compliance with the rules and regulations of the commissioner, and the accounting for and paying over of all moneys coming into his custody by virtue of his agency. An agent shall not, at any time, have on hand a stock of alcoholic liquors greater in value than the amount of his bond.

WV Legislature

§60-3-8. Agent to make no profit from sales.

An agent shall make no profit from the sale of alcoholic liquors, nor shall he receive compensation for the performance of his duties as agent other than that paid him by the commission.

WV Legislature

§60-3-9. Uniform prices; posting and distribution of price lists; continuation of price increase on alcoholic liquors.

The commissioner shall, from time to time, fix uniform prices for each variety, class and brand of alcoholic liquors offered for sale in state stores. Alcoholic liquors shall be sold in state stores and agencies only at the uniform prices fixed by the commissioner.

The commissioner shall prepare price lists showing the price of each variety, class or brand. Price lists shall be posted prominently in each store and shall be available for distribution and inspection in every state store and agency.

The commissioner, in the exercise of his authority under this section, is hereby directed to continue the increase in the price of alcoholic liquors, heretofore effected pursuant to the provisions of this section as amended by chapter six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one, which is presently producing an additional annual revenue of $1,600,000 on an annual volume of business equal to the average for the past three years.

The revenue derived from the increase in the price of alcoholic liquors shall be deposited into the General Revenue Fund in the manner hereinafter provided in section seventeen of this article.

WV Legislature

§60-3-9a.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-3-9b.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-3-9c.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-3-9d. Tax on purchases of intoxicating liquors inside and outside corporate limits of municipalities.

(a)(1) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied a tax upon all purchases of intoxicating liquor from state stores or other agencies of the Alcohol Beverage Control Commissioner, of wine from any person licensed to sell wine at retail under the provisions of §60-8-1 et seq. of this code, and of wine from distributors licensed to sell or distribute wine under the provisions of §60-8-1 et seq. of this code. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the commissioner, by the person licensed to sell wine at retail, or by the distributor licensed to sell or distribute wine, as the case may be: Provided, That the tax may not be collected on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of §60-7-1 et seq. of this code: Provided, however, That the tax may not be collected on purchases of intoxicating liquors or wine in the original sealed package for the purpose of resale in the original sealed package if the final purchase of such intoxicating liquors or wine is subject to the tax imposed under this section, under §8-13-7 of this code, or under §60-3A-21 of this code. This section may not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code. For purposes of this article, the term "original sealed package" means an original sealed package as defined in §8-13-7 of this code.

(2) (A) All such tax collected within one mile of the corporate limits of any municipality within the state shall be remitted to such municipality; all other tax collected shall be remitted to the county in which it was collected: Provided, That where the corporate limits of more than one municipality is within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of said municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

(B) Effective January 1, 2019, all such tax collected on sales sourced within the corporate limits of any municipality within the state shall be remitted to that municipality. All such tax collected on sales sourced outside the corporate limits of any municipality shall be remitted to the county in which the sale is sourced.

(C) When determining whether the tax is collected within the corporate limits of any municipality, a seller shall use the sourcing rules provided in §11-15B-1 et seq. of this code.

(3) Rulemaking. — (A) The Tax Commissioner shall propose rules for promulgation in accordance with the requirements of §29A-3-1 et seq. of this code to provide for the collection of the tax required by this section. The Tax Commissioner may promulgate emergency rules in accordance with §29A-3-15 of this code, as necessary, to carry out the requirements of this section.

WV Legislature

(B) The West Virginia Alcohol Beverage Control Commissioner may propose rules for promulgation in accordance with the requirements of §29A-3-1 et seq. of this code to provide for the collection of the tax required by this section. The West Virginia Alcohol Beverage Control Commissioner may promulgate emergency rules in accordance with §29A-3-15 of this code, as necessary, to carry out the requirements of this section.

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

WV Legislature

§60-3-10. Records and accounts for stores and agencies; reports and audits.

The commission shall install a uniform system of records and accounts for state stores and agencies. It shall require a daily report of sales and stock inventory, and shall audit the accounts and check the stock inventory of each store and agency at least once in every thirty days.

WV Legislature

§60-3-11. Stock or inventory control.

The commission shall prescribe a method of stock or inventory control that will show the amount of each variety, class and brand of alcoholic liquor on hand in each state store, agency, and warehouse at any time. The commissioner shall not list or stock powdered alcohol in inventory.

WV Legislature

§60-3-12. Days and hours state stores and agencies may open.

The commission shall fix the days on which state stores shall be open and the hours of opening and closing, and the hours during which agencies may sell alcoholic liquors. Stores shall not be open nor shall agencies sell alcoholic liquors on:

1. Sundays.

2. Any general election day.

WV Legislature

§60-3-13. Advertising or recommendation of brands prohibited.

A store or agency shall not display or distribute any advertising matter, nor shall a person employed in a state store or agency advertise or recommend any type, class or brand of alcoholic liquors.

WV Legislature

§60-3-14. Acquisition of equipment, etc.; analysis of liquors.

The commission shall acquire by purchase or lease equipment, materials, supplies and other property necessary for the operation of state stores in the manner required for the purchase or lease of property by other state departments. This requirement shall not apply to the purchases of alcoholic liquor for sale or to the leasing of premises for state stores or warehouses.

The commission shall require a sworn statement with the delivery of alcoholic liquors purchased by it that the goods are as represented, and do not contain any impure or deleterious matter. The commission shall by frequent chemical analysis determine that liquors offered for sale in state stores and agencies are pure, potable, and not misrepresented.

WV Legislature

§60-3-15. Amount of operating fund and value of inventory stock allowed; contract for manufacture of state brand; ordering listed and unlisted brands.

In order to avoid the accumulation of excessive stocks in warehouses and stores, the commissioner shall so plan his purchases of alcoholic liquors for sale in state stores and agencies that none of the stock on hand be on a consignment basis and that the amount of operating fund and the value of inventory stock shall not exceed $20 million.

The commissioner may, with the consent of the Governor, contract for the manufacture of alcoholic liquors for sale in state stores and agencies. Such liquors shall bear a special designation as "state brand."

Listed brands and sizes of spirituous liquors shall not be reordered in quantities greater than at the rate of comparative gross sales as determined by the last three monthly reports published prior to each reorder: Provided, That to take advantage of price discounts or to anticipate price increases listed brands may be reordered upon the basis of anticipated needs to be determined by projecting adjusted sales records; but in no event shall the amount of operating fund and the value of inventory stock exceed the limit provided in the first paragraph of this section.

The initial order of any new or unlisted brand of spirituous liquor, excepting wine, shall not exceed five hundred cases. The initial order of new or unlisted wine brands shall not exceed fifteen hundred cases.

WV Legislature

§60-3-16. Sale in sealed packages; manufacturer's label.

Alcoholic liquors shall be sold only in sealed packages, bearing such seals and labels as the commission may require.

A manufacturer of liquor offered for sale in state stores and agencies shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commission may require.

WV Legislature

§60-3-17. Regulations as to handling and depositing of moneys collected; monthly remittances; penalty.

The commissioner, with the approval of the state Treasurer, shall prescribe regulations for the handling and depositing of all moneys collected by the commissioner. All receipts accruing to and available for the General Revenue Fund in excess of the requirements of the operating fund and the license fee and additional sales tax imposed by the provisions of this chapter shall be remitted by the commissioner to the state Treasury monthly within fifteen days next after the end of each calendar month.

If the commissioner fails to remit such moneys to the state Treasury within the time specified in accordance with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined $1,000.

WV Legislature

§60-3-18. Operating fund continued; use; maximum amount.

The operating fund of the commissioner, heretofore created in the state Treasury, is hereby continued and shall be a revolving fund from which all operation and administration expenses of the commissioner shall be paid.

All moneys collected by the commissioner shall be credited to the operating fund until that fund reaches an amount sufficient for the current and routine requirements of the office of the West Virginia Alcohol Beverage Control Commissioner, this amount to be not in excess of the amount hereinbefore provided in section fifteen of this article.

WV Legislature

§60-3-19.

Repealed.

Acts, 1966 Reg. Sess., Ch. 3.

WV Legislature

§60-3-19a.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-3-20. Sales, mode of payment.

The sale of alcoholic liquors in state stores and in state agencies shall be for cash, money order, certified check, cashier's check or traveler's check only. In the case of private clubs as defined in article seven of this chapter, letters of credit from banks guaranteeing payment of checks may be filed with the commissioner. Filing of such letters may permit the commissioner to accept the club's check.

WV Legislature

§60-3-21. Limitation on amount to be sold.

Not more than ten gallons of alcoholic liquor shall be sold to a person at one time without the approval of the commissioner or his representative; but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes, and sales in case lots may be made in the discretion of the commissioner: Provided, That this section shall not apply to private clubs as defined in article seven of this chapter.

WV Legislature

§60-3-22. Sales to certain persons prohibited.

(a) Alcoholic liquors and nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code shall not be sold to a person who is:

(1) Less than twenty-one years of age;

(2) An habitual drunkard;

(3) Intoxicated;

(4) Addicted to the use of any controlled substance as defined by any of the provisions of chapter sixty-a of this code; or

(5) Mentally incompetent.

(b) It shall be a defense to a violation of subdivision (1), subsection (a) of this section if the seller shows that the purchaser:

(1) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or

(2) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

WV Legislature

§60-3-22a. Unlawful acts by persons.

(a) Any person under the age of twenty-one years who, for the purpose of purchasing alcoholic liquors from a state liquor store or an agency, 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 alcoholic liquors from a state liquor store or an agency, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed $50 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.

(b) Any person who shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom they are not related by blood or marriage, any alcoholic liquors from whatever source, is guilty of a misdemeanor and, shall, upon conviction thereof, be fined in an amount not to exceed $100 or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

WV Legislature

§60-3-23. Conduct of purchasers upon premises of state store.

A person, while on the premises of a state store or agency, shall not:

(1) Break the seal upon any package of alcoholic liquors;

(2) Consume alcoholic liquor;

(3) Loiter.

WV Legislature

§60-3-24. Authority of employees to make arrests; penalty for resisting or assaulting employee; enforcement of chapter.

An appointee or employee of the commission shall have the authority of a peace officer, to arrest a person for an act committed on or about the premises of a state warehouse, state store, or agency, and in his presence, which amounts to:

(1) A violation of a provision of this chapter;

(2) Disorderly conduct.

The commission shall furnish its appointees and employees with an official badge as evidence of this authority.

A person who resists or commits an assault upon an appointee or employee of the commission while engaged in the performance of his duties hereunder shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500, or by confinement in jail not less than thirty days nor more than six months, or, in the discretion of the court, by both such fine and imprisonment.

Members of the commission are hereby vested, and such officers, agents and employees of the commission as shall be designated by the commission shall, upon being so designated, be vested, with like power and authority to enforce the provisions of this chapter and the criminal laws of the state relating thereto as are vested in sheriffs of counties and members of the department of public safety.

WV Legislature

§60-3-25. Permit for farm winery to import produce in excess of established limits.

Upon application by the holder of a farm winery license, filed with the West Virginia Alcohol Beverage Control Commissioner, showing, due to unusual climatic or other conditions adversely affecting its ability to obtain from within this state seventy-five percent of the grapes, grape juice, other fruits or fruit juices or honey necessary to produce its wine, the commissioner may issue to the applicant a permit to import such products in an amount deemed necessary by the commissioner to allow such farm winery to produce wine within the quota established by section five-a, article one of this chapter. The permit issued under this section shall not be effective for more than ninety days. The burden of proof shall be upon the applicant to show that grapes, grape juice, fruit, fruit juice or honey of the type normally used by the licensee are not available from any other source within the State of West Virginia, and no application for a permit under this section shall be considered by the commissioner unless it is accompanied by written findings by the West Virginia agriculture commissioner in support thereof.

WV Legislature

§60-3-26. Sale of certain liquors prohibited.

(a) Upon the effective date of this section, the commissioner is hereby directed to divest the state of all stocks of alcoholic liquors in the commissioner's possession manufactured in the Russian Federation, or by any person or entity located therein, and to cease purchasing such products during the time this section is in effect.

(b) The commissioner, at the direction of the Governor, is hereby authorized to auction to the highest bidder or sell at a public event all stocks of alcohol liquors in the commissioner's possession which were either manufactured in the Russian Federation or by a person or entity located therein.

(c) The state's proceeds from the sale authorized by subsection (b) of this section shall be paid to a licensed, recognized charitable organization or organizations engaged in assisting the people of Ukraine.

(d) The provisions of this section shall expire three years from the effective date of the section or until the Governor lifts the ban established in subsection (a) of this section.

WV Legislature

§60-3A-1. Short title.

This article shall be known and may be cited as the "State Retail Liquor License Act".

WV Legislature

§60-3A-2. Legislative findings and declaration; legislative purpose.

(a) The Legislature hereby finds and declares that the sale of liquor at retail should no longer be by the state, but rather by retail licensees; that there is a need for the state to control the wholesale sales of liquor; that the health and welfare of the citizens of this state will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and that the operation and efficiency of state government will be improved by removing the state from the retail sale of liquor and permitting sales of liquor by retail licensees under licenses issued by the state together with strict enforcement of laws and rules relating to the sale of liquor.

(b) It is the purpose of the Legislature in providing for the retail sale of liquor to:

(1) Continue revenue to the state from the wholesale sale of liquor by requiring all retail licensees to purchase all liquor (other than wine) from the commissioner and by further requiring all private clubs licensed under the provisions of article seven of this chapter to purchase all liquor (other than wine) from retail licensees;

(2) Provide a system of controls, through limitations on the numbers of retail outlets and application of the police power of the state, to discourage the intemperate use of liquor;

(3) Preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor;

(4) Obtain revenue for the state from the issuance of retail licenses;

(5) Facilitate the responsible marketing and growth of existing retail outlets; and

(6) Encourage the sale of liquor in freestanding liquor retail outlets that offer a wide variety of liquor at competitive prices.

WV Legislature

§60-3A-2a. Further legislative findings, declarations and purpose.

(a) In addition to the findings and declarations set forth in subsection (a), section two of this article, the Legislature hereby finds and declares that:

(1) The provisions of this article as enacted during the regular session of the Legislature in 1990 were intended to require that all licenses issued for the retail sale of liquor expire as of July 1, 2000, and that the issuance of retail licenses for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter, be based on sealed competitive bids except as provided in section ten-b of this article;

(2) It is the intention of the Legislature to provide that all retail licenses issued beginning July 1, 2000, expire ten years from the date of issuance and that every ten years the issuance of retail licenses be based on competitive bids, except as provided in section ten-b of this article;

(3) The purposes set forth in subsection (b), section two of this article remain the purposes of the Legislature;

(4) Many of those persons who currently hold retail licenses have not only provided the services to the public contemplated by this article, but in many instances have provided employment, invested significant time and money into their businesses and otherwise made substantial contributions to the economic and civic development of the communities in which they conduct business, and therefore, current retail licensees should be afforded special consideration if their bids for the licenses issued for the ten-year period beginning July 1, 2000, and July 1 every ten years thereafter, be unsuccessful;

(5) Those persons who are issued a retail license for the ten-year period beginning on July 1, 2000, and for any ten-year period thereafter should also be afforded special consideration if they operate or seek to operate a freestanding liquor retail outlet or if their bids for a retail license are unsuccessful; and

(6) Further statutory changes are desirable to effect the purposes set forth in subsection (b), section two of this article.

(b) It is, therefore, the further purposes of the Legislature in providing for the retail sale of liquor to:

(1) Require that all licenses issued for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter be based on sealed competitive bids except as provided in section ten-b of this article;

(2) Provide active retail licensees who operate or seek to operate a freestanding liquor retail outlet the opportunity to pay a purchase option for a Class A retail license or licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter;

WV Legislature

(3) Provide current retail licensees who, having bid in a manner consistent with the provisions of this article, fail to submit the highest bid for licenses issued for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter an additional opportunity to obtain the license; and

(4) Effect statutory changes to further the purposes provided in this section and section two of this article.

WV Legislature

§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.

(a) Notwithstanding any provision of this code to the contrary, the sale of liquor by retail licensees in accordance with the provisions of this article is lawful.

(b) Upon the opening of a retail outlet in any market zone, the state shall, as soon as practicable, discontinue operating any and all state liquor stores and agency stores within the market zone so long as a retail outlet is in operation in the market zone.

(c) No provision of this section shall prevent the commissioner, with the consent of the board, from operating a state liquor store in a market zone pursuant to the provisions of article three of this chapter where there are no retail outlets in operation, and the operation of any retail outlet in the market zone is prevented by a matter in controversy pending judicial adjudication or the licensee is unable or unwilling to open a retail outlet: Provided, That, the board determines that the resolution of the controversy will continue for such duration that the opening of a state liquor store is necessary to meet reasonable consumer concerns of availability of liquor.

WV Legislature

§60-3A-3a. Liquor sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner informing the Commissioner that the Class A licensee or Class B retail licensee will hold a liquor sampling event, including:

(1) The day of the event;

(2) The location of the event;

(3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee, Class B retail licensee, or from the commissioner. Alternatively, a licensed representative may purchase a sealed bottle of West Virginia product at retail in West Virginia from the Class A retail licensee or Class B retail licensee for use at the licensee's liquor sampling event on an approved sampling day. The licensed representative must submit a promotions form and receive approval prior to purchasing and furnishing a sealed bottle of West Virginia product at retail in West Virginia for a Class A retail licensee or Class B retail licensee. The licensed representative may, upon approval of the licensee, serve the complimentary samples subject to the requirements of this section. Any licensed representative that participates in purchasing sealed bottles of West Virginia product for licensees must make this same or equivalent sampling opportunity available to any Class A retail licensee or Class B retail licensee upon request by the licensee.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) four separate and individual half ounce samples per customer verified to be 21 years of age or older; totaling not more than two ounces of liquor.

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

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee,or Class B retail licensee; and

(2) Be at least 21 years of age or older.

www.Legislature

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee’s licensed premises or Class B retail licensee’s restricted area on the licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §60-3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

WV Legislature

§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor 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 liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is $200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) *Sale Requirements*. -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party 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 in §11-16-1 *et seq*. of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) "Food", for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order: *Provided*, That the entire delivery order may not contain any combination of

WV Legislature

sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than $20 per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq*. of this code, wine delivery pursuant to §60-8-1 *et seq*. of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 *et seq*. of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed $20.

(e) *Private Liquor Delivery Requirements*. —

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person’s name, driver’s license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container 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) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under

WV Legislature

§11-16-1 *et seq*. of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle or can in the original container 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 shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and 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, and 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. A retail liquor outlet or third party private liquor delivery licensee shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit*. —

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery 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) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

WV Legislature

(h) *Enforcement*. —

(1) The retail liquor outlet or the licensed third party 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 sealed liquor bottle. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(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.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, 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.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, 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.

WV Legislature

§60-3A-4. Definitions.

(a) "Active retail license" means a current license for a retail outlet that has been open and in continuous operation for a period of not less than twelve months prior to July 1, 2010, or July 1 every ten years thereafter.

(b) "Active retail licensee" means a person who holds an active retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person's successor or any person who holds an active retail license when it expires at the end of a ten-year period.

(c) "Applicant" means any person who elects to pay a purchase option for a Class A retail license, who bids for a retail license or who seeks the commissioner's approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of this article.

(d) "Application" means the form prescribed by the commissioner which must be filed with the commissioner by any person bidding for a retail license.

(e) "Board" means the Retail Liquor Licensing Board created by this article.

(f) "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.

(g) "Class B retail license" means a retail license permitting the sale of liquor at a mixed retail liquor outlet.

(h) "Current retail licensee" means a person who holds a retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person's successor or any person who holds a retail license when it expires at the end of a ten-year period.

(i) "Designated areas" means one or more geographic areas within a market zone designated as such by the board.

(j) "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy-making function.

(k) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products.

(l) "Liquor" means alcoholic liquor as defined in section five, article one of this chapter and also includes both wine and fortified wines as those terms are defined in section two, article

WV Legislature

eight of this chapter.

(m) "Liquor sampling event" means an event approved by the commissioner, for a Class A retail licensee to hold a liquor sampling authorized pursuant to section three-a of this article.

(n) "Market zone" means a geographic area designated as such by the board for the purpose of issuing retail licenses.

(o) "Mixed retail liquor outlet" means a retail outlet that sells liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products, in addition to convenience and other retail products.

(p) "Person" means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(q) "Retail license" means a license issued under the provisions of this article permitting the sale of liquor at retail.

(r) "Retail licensee" means the holder of a retail license.

(s) "Retail outlet" means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.

(t) "Sampling day" means any days and hours of the week where retail licensees may sell liquor pursuant to section eighteen, article three-a, chapter sixty of this code for a Class A retail licensee to conduct a liquor sampling event.

(u) "West Virginia product" means all liquor types and classes as approved by the commissioner and maintained on the ABCA retail liquor product list.

WV Legislature

§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.

(a) There is hereby continued the state retail liquor licensing board which shall be composed of five members, three of whom shall be appointed by the Governor by and with the advice and consent of the Senate, one of whom shall be the secretary of tax and revenue, and one of whom shall be the commissioner. The secretary of tax and revenue and the commissioner shall serve as the chairman and secretary, respectively, of the board. No more than two of the three members appointed by the Governor shall be of the same political party. No member of the board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.

(b) The provisions of this subsection apply to the three members appointed by the Governor. They shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by Section 5, Article IV of the Constitution of this state. Vacancies shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy. Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall receive compensation of $100 per day for each day actually engaged in the performance of their duties as board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Appointments to fill vacancies made after the amendment to this section made in one thousand nine hundred ninety-nine shall be made to provide that after the next two appointments, and thereafter, there is a member from each of the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(d) Staff, office facilities and costs of operation of the board shall be provided by the commissioner.

WV Legislature

§60-3A-6. General powers and duties of board and commissioner.

(a) The board shall create, based on economic and demographic factors, market zones within the state for the issuance of Class A and Class B retail licenses.

(b) The commissioner shall:

(1) Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving applications;

(2) Develop a form of retail license to be issued to each retail licensee under the provisions of this article;

(3) Disseminate to the public information relating to the issuance of retail licenses;

(4) Promulgate standards for advertising the sale, availability, price and selection of liquor;

(5) Set minimum standards for retail outlets regarding the amount and variety of liquor a licensee must offer for sale at each retail outlet; the size, space and design of each retail outlet; the amount of inventory and displayed inventory of liquor in each retail outlet; order quantities sufficient to qualify for delivery to each retail outlet; phone, computer and Internet requirements for each retail outlet; the verification of liquor orders; liquor delivery dates and routes for each retail outlet; and such other requirements the commissioner deems necessary;

(6) Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class A retail license which shall include, without limitation, the requirement that a minimum square footage of displayed inventory available for retail purchase at the retail outlet be composed of liquor, beer and nonintoxicating beer products and that liquor, beer and nonintoxicating beer products available for sale are placed for sale throughout the entire retail area of the retail outlet including the retail floor space and shelving;

(7) Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class B retail license which shall include, without limitation, the requirements that a minimum square footage of the displayed inventory available for purchase at the retail outlet be composed of liquor products; that liquor available for sale in the retail outlet is placed only in an area of the retail outlet that prominently displays signage identifying the area as a restricted liquor area and stating that no one under the age of twenty-one may purchase liquor; and that the area is separate from and not highly visible to persons outside of the restricted liquor area.

(8) Enforce the provisions of this article;

(9) Impose civil penalties upon retail licensees;

(10) Enter the retail outlet of any retail licensee at reasonable times for the purpose of

WV Legislature

inspecting the same, and determining the compliance of such retail licensee with the provisions of this article and any rules promulgated by the board or the commissioner pursuant to the provisions of this article; and

(11) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight 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 such section was set forth in extenso herein.

(c) The board and the commissioner shall each:

(1) Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under this article;

(2) Adopt, promulgate, amend or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a of this code; and

(3) Notwithstanding any other provision of this code to the contrary, proposed legislative rules for this article filed in the state Register by September 1, 2009, may be filed as emergency rules. Such emergency rules shall include the standards, criteria and formulae or methodology utilized by the board when establishing the minimum bid for each license pursuant to section ten-b of this article.

WV Legislature

§60-3A-7. Market zones; Class A and Class B retail licenses.

(a) The market zones established by the board for the retail sale of liquor within this state under the enactment of this section in 1990 may not be modified by the board unless authorized by the Legislature. For each market zone established by the board, the commissioner may issue one or more Class A retail licenses and one or more Class B retail licenses within the market zone: Provided, That the number of Class B retail licenses to be issued by the commissioner within a market zone shall not exceed one hundred fifty percent of the number of Class A retail outlets authorized for that market zone, except as otherwise authorized by subsection (d) of this section or section twenty-seven-a of this article: Provided, however, That, except as authorized by subsection (d) of this section or section twenty-seven-a of this article, in a market zone where the number of Class A retail licenses issued by the commissioner is an odd number, the number of Class B retail licenses which may be issued in that market zone shall be rounded up to the next highest whole number following that number which is equal to one hundred fifty percent of the number of Class A retail licenses issued by the commissioner: Provided, That for the ten-year period beginning July 1, 2010, the number of Class B retail licenses which are available for bid in a market zone shall not be less than the number of mixed retail outlets located in that market zone as of October 31, 2009.

(b) When authorizing Class B retail licenses for a market zone, the board may create one or more designated areas within the market zone and authorize one Class B retail license for each designated area. For each market zone, the commissioner may issue additional Class B retail licenses for retail outlets to be located outside any designated area, but the number of additional Class B retail licenses, when added to the total number of Class B retail licenses issued for all designated areas within the market zone, shall not exceed the maximum number of Class B retail licenses permitted under subsection (a) of this section for that market zone, except as authorized by subsection (d) of this section or section twenty-seven-a of this article.

(c) A person may hold one or more Class A retail licenses and one or more Class B retail licenses in a market zone or zones.

(d) Notwithstanding any provision of subsection (a) or (b) of this section, no later than thirty days prior to the receipt of the bids described in section ten-b of this article, the board may authorize the commissioner to issue additional Class B retail licenses in a market zone for the ten-year period which begins next following July 1, where the board determines that:

(1) Each retail outlet authorized to operate in the market zone has been open and in operation for not less than one year;

(2) Economic and demographic factors clearly demonstrate the need for an additional retail outlet or outlets within the market zone to meet consumer demand; and

(3) The issuance of an additional Class B license in the market zone will not significantly

impair the efforts to procure the revenues described in subsection (b), section ten-b of this article.

(e) The board shall establish the minimum bid for any additional Class B retail licenses authorized under subsection (d) of this section.

(f) No person may hold a combination of Class A or Class B retail licenses that, in the aggregate, authorizes the operation of more than thirty percent of the total number of retail outlets authorized under the provisions of this article to operate in this state.

WV Legislature

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

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

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

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application. 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 applicant, and being of good moral character, and meet 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. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have not: (A) Been convicted in this state or any other state of any felony in the five years preceding the date of application; or (B) been convicted of any other crime involving fraud, dishonesty, or deceit in the five years preceding the date of application; or (C) been convicted of any felony in this or any other state court or any federal court for a violation of state or federal alcohol laws. If the applicant is other than an individual, that none of its executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and an applicant shall not be issued or eligible to hold a retail license under this article, if the applicant:

(1) Has been, within the five years preceding the date of application: (A) Convicted in this state of any felony; or (B) convicted of a crime involving fraud, dishonesty, or deceit; or (C) convicted of any felony in this or any other state court or any federal court for a violation of state or federal alcohol laws; or

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

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

WV Legislature

§60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing.

(a) Upon receipt of an application for a retail license and such supplemental information as the commissioner may require, the commissioner may conduct such investigation of an applicant as deemed necessary or desirable.

(b) Upon the completion of any investigation of an applicant, the commissioner shall inform such applicant in writing whether the application has been approved or denied, and shall post a copy of the decision in the commissioner's office.

(c) When an application is denied, the commissioner shall provide the applicant the reasons for the denial, including specific findings of fact, and the applicant shall be entitled to a hearing before the commissioner if a hearing is requested within five days of the decision. Any such hearing shall be held as specified in section twenty-eight of this article, but the decision after hearing shall, notwithstanding the provisions of section twenty-eight, be final and binding and not subject to judicial review.

(d) An applicant shall provide all information required by this article and satisfy all requests for information pertaining to qualification and in the form specified by the commissioner. By filing an application, an applicant shall waive liability for any damages resulting from any disclosure or publication in any manner of any material or information acquired during inquiries, investigations or hearings.

WV Legislature

§60-3A-10. Bidding procedure.

(a) Except as provided in section ten-b of this article, bids for licenses shall be governed by the provisions of this section.

(b) The issuance of retail licenses shall be based on sealed competitive bids in accordance with the provisions of this section. Bids for the issuance of retail licenses shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each market zone within which a retail outlet shall be located. The second publication of the notice shall appear more than thirty days next preceding the final day for submitting bids.

(c) Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the board has created one or more designated areas for the market zone, whether the bid is for a Class A or Class B retail license to be issued for any designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of the bids. Subject to the provisions of section ten-b of this article, each retail license shall be awarded to the highest bidder. No bid shall be considered unless the bond required under section eleven of this article is submitted to the commissioner. All bids for a retail license may be rejected by the board if the board determines that the highest bid is inadequate, in which event the commissioner shall begin anew the bidding process for that retail license.

(d) Each person desiring to submit a bid shall file the bid with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder's application shall be maintained as a public record, shall be open to public inspection in the commissioner's office and shall not be destroyed without the written consent of the Legislative Auditor.

(e) Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier's check. All retail licenses shall be signed by the commissioner in the name of the state.

(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee, at the time specified by the commissioner, the bond provided in section eleven of this article shall be forfeited and the bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for the retail license or reject all bids and start anew the bidding procedure for the retail license.

www.LegiScure

§60-3A-10a. Preference for resident bidders.

In determining the highest bidder for purposes of section ten of this article, the board shall afford a five percent preference for West Virginia resident bidders, which shall be computed by adding five percent of the bid price to the bid price submitted by each resident bidder. For purposes of this section a bidder shall be considered to be a West Virginia resident if the bidder: (1) Has resided in this state for at least four years immediately prior to the date on which the bid is opened; or, if the bidder is an applicant other than an individual, has had its headquarters or principal place of business in this state for at least four years immediately prior to that date; and (2) meets the requirements set forth in section forty-four, article three, chapter five-a of this code relating to a residency of vendors, except for the requirement of having paid business and occupation taxes.

WV Legislature

§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2010; purchase options for bids beginning July 1, 2010; and licenses issued for each ten-year period thereafter.

(a) The issuance of retail licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of section ten of this article except as provided in this section.

(b) Prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, the board shall determine the minimum bid for each license based upon a review of inflation data, demographic data, the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the Governor's official revenue estimates for fiscal year 2009-2010 as presented to the regular session of the Legislature in 2009.

(c) Prior to accepting bids for retail licenses to be issued for the ten-year periods beginning July 1, 2010, and July 1 every ten years thereafter, the board shall determine the minimum bid for each retail license based upon a review of the sales at each retail outlet permitted to operate under the retail license and such other factors as the board may determine to generate the revenues from retail license renewal projected by the Governor's official revenue estimates for the fiscal year preceding the expiration of the retail licenses.

(d)(1) Notwithstanding any provision of this article to the contrary, prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and every ten-year period thereafter, each active retail licensee operating or seeking to operate a freestanding liquor retail outlet shall be eligible to purchase a Class A retail license or licenses as provided in this subsection.

(2) At least sixty days prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, the board shall provide notice to each eligible retail licensee of his or her option to purchase a Class A retail license or licenses as provided in this subsection. The board shall include with this notice an explanation of the financing option provided in section ten-d of this article and a financing application form prepared by the commissioner.

(3) An eligible retail licensee may elect to pay a purchase option or options for each retail outlet operating under an active retail license currently held by the licensee. A retail licensee may only exercise a purchase option for the lesser of four Class A retail licenses or the number of active retail licenses currently held by the licensee.

(4) Each eligible retail licensee who elects to pay a purchase option shall, within thirty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, pay to the commissioner an amount equal to ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase or, if the retail licensee elects to take the financing option

WV Legislature

provided in section ten-d of this article, a down payment, the amount of which shall be calculated in accordance with the provisions of that section. A retail licensee shall be awarded a Class A retail license or licenses upon the commissioner's receipt of his or her payment or down payment: Provided, That the commissioner determines that the retail licensee is in good standing with the state and meets all other requirements imposed by the provisions of this article for the issuance of a Class A retail license.

(5) A Class A retail license purchased in accordance with this subsection shall be issued for the ten-year period beginning July 1, 2010, or July 1 every ten years thereafter, and shall expire on June 30, 2020, or on June 30 every ten years thereafter.

(6) Nothing in this subsection may be interpreted as affecting the ability of a retail licensee to bid for a retail license or licenses as otherwise provided in this article: Provided, That the retail licensee meets all other requirements imposed by the provisions of this article for the submission of bids.

(e) All bids for a retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the license. If the current retail licensee holding the same retail license at the time of submission of the bid for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the retail license, submitted a bid that was not less than the minimum bid and is, after considering any preference applicable under the provisions of section ten-a of this article, an unsuccessful bidder for the retail license for the period beginning July 1, 2010, or for any ten-year period thereafter, on July 1 when the retail license expires, the commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of subsection (f) of this section, and upon compliance with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee. If, within the time determined by the commissioner, the current retail licensee pays the amount to the commissioner and complies with all other requirements imposed by the provisions of this article for the issuance of the retail license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee.

(f) The board shall, in determining the amount a current retail licensee who is an unsuccessful bidder shall pay as described in subsection (e) of this section, afford the unsuccessful bidder a preference. If the unsuccessful bidder is a West Virginia resident as defined in section ten-a of this article, the board shall afford the unsuccessful bidder a five percent preference in addition to the five percent preference afforded under section ten-a of

www.Legislature

this article. If the unsuccessful bidder is not a West Virginia resident, the board shall afford the unsuccessful bidder a five percent preference. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price: Provided, That under no circumstances may the preference bring the price of the bid below the minimum bid established by the board: Provided, however, That a current retail licensee who is not operating any of the retail outlets for which he or she is authorized under the license is not eligible for the preference provided for under this section.

(g) In the event all bids submitted for a retail license fail to meet the minimum bid amount for the license as determined by the board, the board may offer the license for bid again after it determines a new minimum bid amount for the retail license.

WV Legislature

§60-3A-10c. Criminal penalties for unlawful inducement.

(a) Any person who gives another person any thing of value to induce the other to refrain from bidding for a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than $10,000, and, in addition, shall be subject to a civil penalty payable to the commissioner of not more than $1 million.

(b) Any person who gives a person any thing of value to induce the other to refrain from operating an outlet authorized under a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than $10,000, and, in addition, shall be subject to a civil penalty payable to the commissioner of not more than $1 million.

WV Legislature

§60-3A-10d. Financing option for retail licensees purchasing Class A retail licenses.

(a) The commissioner shall offer financing to each retail licensee who elects to pay the purchase option for a Class A retail license or licenses as provided in section ten-b of this article: Provided, That the retail licensee is approved by the commissioner for financing and otherwise complies with the requirements of this section: Provided, however, That the retail licensee agrees to enter a financing agreement with the commissioner as provided in subsection (d) of this section.

(b) The commissioner shall prepare an application form for retail licensees who desire to elect the financing option provided in this section. The commissioner shall make the form available to retail licensees in paper or electronic format at least sixty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter. At a minimum, the application form shall require the following information:

(1) Certification that the applicant elects to pay the purchase option for a Class A retail license or licenses as provided in section ten-b of this article;

(2) Certification that the applicant is the current holder and operator of an active retail license issued by the board;

(3) A description of the retail license or licenses currently held by the applicant;

(4) Any information the commissioner requires to evaluate the creditworthiness of the applicant, including without limitation the applicant's authorization to perform a criminal background and credit check; and

(5) Any additional information the commissioner requires to effectuate the purposes of this section.

(c) For an applicant to be considered for financing, the application required under subsection (b) of this section must be submitted to the commissioner with a down payment of fifty percent of the total amount due under the financing agreement provided in subsection (d) of this section no later than May 1, 2010, or, for subsequent retail license periods, May 1 every ten years thereafter. The commissioner shall make a determination as to the eligibility of an applicant for financing and the issuance of a Class A retail license within fifteen days of his or her receipt of the application. If the commissioner determines that an applicant is ineligible for financing, is not in good standing with the state or does not otherwise meet the requirements of this article for the issuance of a Class A retail license, the commissioner shall notify the applicant that his or her application for financing is denied and shall refund in full any moneys paid to the commissioner as a down payment. If the applicant's application for financing is denied for any reason other than the fact that the applicant is not in good standing with the state or is not otherwise eligible for the issuance of a Class A retail license, the commissioner shall provide the applicant the option of paying the full amount of a purchase option for a Class A retail license or licenses as provided in

WV Legislature

subsection (d), section ten-b of this article. At the request of the applicant, the commissioner may credit any moneys received as a down payment towards payment of the full amount of a purchase option for a Class A retail license or licenses.

(d) The commissioner is hereby authorized to enter into a financing agreement with each retail licensee meeting the requirements of this section. The financing agreement shall contain such terms and conditions as prescribed by the commissioner, but at a minimum shall contain the following:

(1) The total amount due, including the required down payment, which shall equal ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase;

(2) The interest to be charged on the total amount due at a rate of the adjusted prime lending rate minus one hundred basis points. The interest rate shall be set on the date the financing is approved by the commissioner;

(3) The total amount due, not including the required down payment, to be payable to the commissioner in monthly or quarterly installments over a period of sixty months. If a retail licensee elects to pay in monthly installments, his or her first payment is due on August 1 and successive payments are due on the first day of each month thereafter until the debt is retired. If a retail licensee elects to pay in quarterly installments, his or her first payment is due on October 1 and successive payments are due on the first day of every third month thereafter until the debt is retired;

(4) The failure of a retail licensee to make a payment in accordance with the terms of the financing agreement shall result in the entire balance of the amount due becoming immediately due and payable to the commissioner and shall result in the forfeiture of the down payment and any moneys paid to the commissioner in accordance with this section; and

(5) The failure of a retail licensee to make a payment in accordance with the terms of the financing agreement within thirty days of the day on which the payment was due shall result in the immediate revocation of the Class A retail license held by the licensee and the commissioner shall reissue the license by sealed competitive bid in accordance with section ten of this article. A retail licensee whose retail license is revoked for failure to make payments as provided in the financing agreement is deemed an unsuitable retail licensee and shall be permanently prohibited from bidding on a retail license under this article.

WV Legislature

§60-3A-11. Bonding requirements.

Each applicant submitting a bid under section ten of this article or electing to pay a purchase option for a Class A license or licenses as provided in section ten-b of this article shall furnish to the commissioner a bond at the time of bidding, which bond shall guarantee the payment of twenty-five percent of the price bid or paid for the retail license. The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commissioner. If furnished in cash or negotiable securities, the principal shall be deposited without restriction in the state Treasurer's office and credited to the commissioner, but any income shall inure to the benefit of the applicant. For applicants bidding on a retail license, the bond shall be returned to an applicant following the bidding if such applicant is not the successful bidder for the retail license, and, if an applicant is the successful bidder, the bond shall be released after issuance of the retail license.

WV Legislature

§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.

(a) The annual retail license period is from July 1 to June 30 of the following year. The annual retail license fee for a Class A or Class B retail license is $2,000. The annual retail license fee for the initial year of issuance shall be prorated based on the number of days remaining between the date of issuance and the following June 30.

(b) All retail licenses expire on June 30 of each year and may be renewed only upon the submission to the commissioner of the same information required for the issuance of the license and any additional information requested by the commissioner on the forms and by the date prescribed by the commissioner, together with the payment to the commissioner of the applicable annual retail license fee required under this section.

(c) No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.

(d) All retail licenses issued or renewed under the provisions of this article for the period ending June 30, 2010, or on June 30 for any ten-year period thereafter, expire and are of no further force or effect as of July 1, 2010, or as of July 1 every ten years thereafter.

(e) Notwithstanding any provision of section eighteen, article four of this chapter to the contrary, a municipality may invoke the authority granted by section four, article thirteen, chapter eight of this code to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in subsection (a) of this section.

WV Legislature

§60-3A-13. Annual reports.

On or before December 31, 1990, and each successive year thereafter, the commissioner shall submit to the Joint Committee on Government and Finance an annual report focused upon subjects of interest concerning retail alcohol sales and of the implementation of this article, including, but not limited to, the total revenue earned by the issuance of retail licenses, the location of each retail outlet and the names of all applicants for retail franchises.

WV Legislature

§60-3A-14. Sale, assignment or transfer of retail license.

(a) No person may purchase or otherwise acquire a retail license unless the commissioner has first approved of such person's qualifications to hold a retail license, which qualifications shall be the same as those required under section eight of this article.

(b) No person may sell, assign or otherwise transfer a retail license without the prior written approval of the commissioner. For purposes of this section, the merger of a retail licensee or the sale of more than fifty percent of the outstanding stock of or partnership interests in the retail licensee shall be deemed to be a sale, assignment or transfer of a retail license under this section.

WV Legislature

§60-3A-15. Surrender of retail license.

Any retail licensee may surrender a retail license to the commissioner at any time. The commissioner shall then proceed to reissue the retail license by following the bidding and other procedures set forth herein for the initial issuance of a retail license.

WV Legislature

§60-3A-16. Restriction on location of retail outlets.

No retail outlet may be located within the immediate vicinity of a school or church: Provided, That the provisions of this section shall not apply to the location of a retail licensee who, on the date of the passage of this act, holds a license for the retail sale of wine, fortified wine or nonintoxicating beer at such location.

WV Legislature

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to §60-4-3 of this code.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than $6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in §60-3-17 of this code.

(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of §60-6-12 and §60-6-13 of this code shall not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under §60-8-1 *et seq*. of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check, or cashier’s check which shall be received by the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee’s checks in an amount up to the amount of the letter of credit.

(e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-7-1 *et seq*. of this code at less than 115 percent of the retail licensee’s cost as defined in §47-11A-6 of this code.

(2) A retail licensee may not sell liquor to the general public at less than 110 percent of the retail licensee’s cost as defined in §47-11A-6 of this code.

WV Legislature

§60-3A-18. Days and hours retail licensees may sell liquor.

Retail licensees may not sell liquor on Easter Sunday, Christmas Day or between the hours of 12:00 a.m. and 6:00 a.m., except that wine and fortified wines may be sold on those days and at such times as authorized in §60-8-34 of this code.

WV Legislature

§60-3A-19. Limitation on amount to be sold.

Not more than ten gallons of liquor may be sold by a retail licensee to a person at one time without the approval of the commissioner or his or her representative, but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes: Provided, That this section does not apply to purchases by private clubs as defined in article seven of this chapter.

WV Legislature

§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.

This article does not apply to retail sales of nonintoxicating beer and a retail licensee may sell nonintoxicating beer for consumption off the premises of any retail outlet operated by such retail licensee if such retail licensee has obtained the appropriate license to sell the same under article sixteen, chapter eleven of this code.

WV Legislature

§60-3A-21. Tax on purchases of liquor.

(a) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied tax upon all purchases of liquor from retail licensees. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the retail licensee.

(b) (1) All such tax collected within the corporate limits of a municipality in this state shall be remitted to such municipality; all such tax collected outside of but within one mile of the corporate limits of any municipality shall be remitted to such municipality; and all other tax so collected shall be remitted to the county in which it was collected: Provided, That where the corporate limits of more than one municipality is within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of such municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

(2) Effective January 1, 2019, all such tax collected on sales sourced within the corporate limits of any municipality within the state shall be remitted to that municipality. All such tax collected on sales sourced outside the corporate limits of any municipality shall be remitted to the county in which the sale is sourced.

(3) When determining whether the tax is collected on sales within the corporate limits of any municipality, a seller shall use the sourcing rules provided in §11-15B-1 et seq. of this code.

(c) The Tax Commissioner, by appropriate rule promulgated pursuant to §29A-3-1 et seq. of this code, shall provide for the collection of such tax upon all purchases from retail licensees, separation or proration of the same, and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rule shall provide that all such taxes shall be deposited with the state Treasurer and distributed quarterly by the state Treasurer upon warrants of the Auditor payable to the counties and municipalities.

WV Legislature

§60-3A-22. Requirement for posting informational sign.

Each retail licensee shall post in an open and prominent place within each retail outlet operated by such person a blood-alcohol chart in the form prescribed by section twenty-four, article six of this chapter.

WV Legislature

§60-3A-23. Records required of retail licensees; inspection of records.

The commissioner shall by rule prescribe the records to be kept by retail licensees relating to the purchase and sale of liquor. Such records shall be open at all reasonable times to inspection by the commissioner.

WV Legislature

§60-3A-24. Unlawful acts by persons.

(a) (1) Any person who is under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $500 or shall be confined in jail, or, in the case of a juvenile, a detention center, for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

(2) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor 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 Control 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 liquor from a retail 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 liquor from a retail licensee is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $100 or confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year. Any person convicted under this section may be sentenced pursuant to the provisions of section one-a, article eleven-a, chapter sixty-two of this code.

(c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $250 or confined in jail for a period not to exceed ten days, or both fined and confined.

(d) No person while on the premises of a retail outlet may consume liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $100 or confined in jail for a period not to exceed ten days, or both fined and confined.

WV Legislature

§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.

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

(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under 21 years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

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

(7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other person, except as provided in subsection (c) of this section;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

(9) Permit any person to break the seal on any package, can or bottle of liquor.

(b) Any person who violates any provision of this article, except section 24 of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than $100 or more than $5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least 18 years of age to serve in any retail licensee's lawful employment at any retail outlet operated by the retail licensee, or from having the person sell liquor or transport liquor on behalf of a manufacturer under the provisions of this article. With the prior approval of the commissioner, a retail licensee may employ persons at any retail outlet operated by a retail licensee who are less than 18 years

WV Legislature

of age but at least 16 years of age, the persons' duties may include the sale of liquor only when directly supervised by a person 21 years of age or older: *Provided*, That the authorization to employ the persons under the age of 18 years shall be clearly indicated on the retail licensee's license: *Provided, however,* That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of liquor when licensed for liquor ordering and delivery under the provisions of this chapter.

WV Legislature

§60-3A-25a. Mandatory verification of age of persons purchasing alcohol.

(a) A licensee who:

(1) Has installed a transaction scan device in its licensed premises; and

(2) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom liquor is sold, furnished, or given away by the use of the transaction device may not be subject to: (A) Any criminal penalties whatsoever; (B) any administrative penalties from the commissioner; or (C) any civil liability whatsoever for the improper sale, furnishing or giving away of liquor to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away liquor to an individual who is less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee, who has improperly sold, furnished or given away liquor to an individual less than twenty-one years of age, is subject to termination from employment, and the employer shall have no civil liability for the termination.

(b) For purposes of this subsection, a licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom liquor is sold by providing evidence:

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

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

(3) That it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of liquor and that it has taken corrective action for any discovered noncompliance with this policy.

(c) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "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 governmental identity card.

WVLegislature

§60-3A-26. Civil penalties.

(a) Any retail licensee who violates any provision of this article or any rule promulgated by the board or commissioner, may be assessed a civil penalty by the commissioner which penalty shall not be more than $1,000 for each such violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the retail licensee's history of previous violations, the appropriateness of such penalty to the size of the business of the retail licensee charged, the gravity of the violation and the demonstrated good faith of the retail licensee charged in attempting to achieve rapid compliance after notification of a violation.

(b) A civil penalty shall be assessed by the commissioner only after the commissioner shall have given at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for the proposed civil penalty and the amount thereof, and shall designate a time and place for a hearing where the retail licensee may show cause why the civil penalty should not be imposed. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(c) The provisions of subsections (b), (c), (d) and (e) of section twenty-eight of this article are applicable to any such hearing and with respect to judicial review thereafter.

WV Legislature

§60-3A-27. Suspension or revocation of retail license.

(a) The commissioner may, upon his or her own motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of this article or of any rule promulgated by the board or commissioner under authority of this article has been violated by any retail licensee. The commissioner may suspend or revoke a retail license if the retail licensee or any employee thereof acting in the scope of his or her employment has violated any such provision, and may suspend a retail license without hearing for a period not to exceed twenty days if he or she finds probable cause to believe that the retail licensee or any employee thereof acting in the scope of his or her employment has willfully violated any such provision.

(b) The commissioner may revoke a retail license for any reason which would constitute grounds for the denial of an application filed pursuant to section eight of this article.

WV Legislature

§60-3A-27a. Revocation of license or reduction of authority to operate retail outlet for failure to operate retail outlet.

(a)(1) The commissioner may revoke a Class A retail license if the licensee fails to operate at least one of the retail outlets authorized under the license. The commissioner may revoke a Class B retail license if the licensee fails to operate the retail outlet authorized under the license.

(2) The commissioner may not accept the bid of a person who has had a license revoked pursuant to subdivision (1) of this subsection when the license is offered for bid following the revocation.

(b)(1) Where a person operates at least one of the retail outlets authorized under a Class A license, but fails to operate the full number of retail outlets authorized under the license, the commissioner may reduce the number of retail outlets the person is authorized to operate under the license by the number that is not being operated.

(2) Notwithstanding any provision of section seven of this article to the contrary, the board may authorize the commissioner to issue, subject to the bid requirements of section ten of this article, a Class B license in the stead of each retail outlet for which authority to operate under a Class A license has been reduced under subdivision (1) of this subsection.

(3) The commissioner may not accept the bid of a person who has had the number of retail outlets authorized under a license reduced pursuant to subdivision (1) of this subsection for any Class B license issued in the stead of a retail outlet previously authorized under the reduced license.

(c) The board shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code prescribing the criteria under which the commissioner is to determine whether a retail licensee has failed to operate an outlet.

(d) A revocation or reduction under this section is subject to the provisions for notice, hearing and review prescribed in section twenty-eight of this article.

WV Legislature

§60-3A-28. Notice of and hearing on revocation; right of appeal; appeal procedures.

(a) Before a retail license issued under the authority of this article is suspended for a period of more than twenty days, or revoked, the commissioner shall give at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for suspension or revocation, and shall designate a time and place for a hearing where the retail licensee may show cause why the retail license should not be suspended or revoked. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(b) The hearing and the administrative procedures prior to, during and following the hearing are governed by and shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code in like manner as if the provisions of article five were fully set forth in this section.

(c) Notwithstanding the provisions of subsection (b), section four, article five, chapter twenty-nine-a of this code, any person adversely affected by a final order entered following the hearing has the right of judicial 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 the review must be filed with the circuit court within thirty days following entry of the final order issued by the commissioner. An applicant or licensee obtaining the review is required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to the matter to circuit court.

(d) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(e) Legal counsel and services for the commissioner in all the proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

(f) Upon final revocation, the commissioner shall proceed to reissue the retail license by following the procedures set forth herein for the initial issuance of a retail license.

WV Legislature

§60-3A-29. Disposition of inventory upon revocation or surrender of retail license.

In the event of the revocation, expiration or surrender of any retail license in accordance with the provisions of this article, the commissioner may, in his or her discretion, purchase, or authorize another person to purchase, all or any portion of the liquor inventory of the retail licensee. If the commissioner elects to purchase, or authorizes another person to purchase, the inventory or any portion of the inventory, the retail licensee shall sell the inventory as directed by, and upon terms determined by, the commissioner.

WV Legislature

§60-3A-30.

Repealed.

Acts, 1999 Reg. Sess., Ch. 5.

WV Legislature

§60-3A-31. Rules of construction; severability.

(a) Nothing contained in this article shall be construed to modify the provisions of article five of this chapter relating to local option elections, except that the references to sales of liquor by the commissioner shall be deemed to refer to sales of liquor by retail licensees.

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

(c) The provisions of subsection (b) of this section shall be fully applicable to all future amendments or additions to this article, with like effect as if the provisions of said subsection (b) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

(d) In the event of any conflict between any provision of this article and any other provision of this code, any such other provision shall be construed and applied so as to enable the board and commissioner to implement and make effective the provisions of this article.

WV Legislature

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

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

WV Legislature

§60-4-2. Licenses for manufacture.

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

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

(2) Wineries in which only wines are manufactured;

(3) Breweries in which beer is manufactured;

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

(b) Retail on-premises and off-premises consumption sales. — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq*., §60-4-1 *et seq*., and §60-7-1 *et seq*. of this code, applicable to liquor retailers, and distillers. In the interest of promoting tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private fairs and festivals, for on-premises consumption sales served by the drink or glass, and off-premises consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct on-premises and off-premises consumption sales of its liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq*. of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail requirements of §60-7-1 *et seq*. of this code when applicable. Additionally, every authorized distillery, mini-distillery, and micro-distillery may provide samples to patrons who are 21 years of age and older and who are not intoxicated. The liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed six ounces.

WV Legislature

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

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

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

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

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

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

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

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

WV Legislature

consumption.

WV Legislature

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

www.Legislature

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

(4) Not ship liquor from overseas or internationally;

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

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

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

(d) *Payment of Fees and Taxes.* —

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

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

WV Legislature

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

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

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

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

(f) *Records and reports.* —

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

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

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

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

(i) *Penalties.* —

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

WV Legislature

§60-4-13. When license to be refused.

The commission shall refuse the license if it finds that:

(1) The applicant is not a suitable person;

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

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

WV Legislature

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

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

WV Legislature

§60-4-15. Amount of license fees.

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

(1) Distilleries, $1,500;

(2) Wineries, $1,500;

(3) Breweries, $1,500;

(4) Bottling plants, $100;

(5) Wholesale druggists, $50;

(6) Institutions, $10;

(7) Industrial use, $50;

(8) Industrial plants producing alcohol, $250;

(9) Retail druggists, $10;

(10) Farm wineries, $50;

(11) Mini-distilleries, $50;

(12) Micro-distillers, $750.

WV Legislature

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

§60-4-19. When license revoked.

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

(1) The licensee is not a suitable person;

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

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

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

WV Legislature

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

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

WV Legislature

§60-4-21. Appeal.

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

(a) For purposes of this section:

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

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

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

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

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

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

WV Legislature

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

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

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

WV Legislature

§60-5-1. Election in county, magisterial district, or municipality.

A county or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county or municipality.

A local option election shall be held at the same time as the next regularly scheduled primary or general election.

WV Legislature

§60-5-2. Election called on petition of five percent of qualified voters.

The county commission, or the governing body of the municipality, shall call a special local option election upon the filing of a petition signed by not less than five percent of the qualified voters within the county or municipality.

WV Legislature

§60-5-3. Form of petition.

The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (municipality) of_____, do hereby petition that a special election be held within the county (city, town) of _____ on the at the date of the next regularly scheduled primary or general election upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be (permitted) (prohibited) in _____?

Name Address Date

(Post office or street and number)

WV Legislature

§60-5-4. Notice of election; when held; election officers.

The county commission or governing body of the municipality shall give notice of the special local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for such publication shall be the area in which the election is to be held. Such notice shall be so published within 14 consecutive days next preceding the election. The election shall be held at the same time as the next regularly scheduled primary or general election. The regular election officers of the county or municipal corporation shall open the polls and conduct the election in the same manner provided for general elections.

WV Legislature

§60-5-5. Form of ballot.

On the ballot shall be printed the following:

Shall the sale of alcoholic liquors for off-premises consumption under the West Virginia Alcohol Beverage Control Commissioner be permitted in _____?

☐ Yes.

☐ No.

(Place a cross mark in the square opposite your choice.)

WV Legislature

§60-5-6. How election conducted and results certified.

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission of the county, or the governing body of the municipality. The county commission or governing body shall without delay certify the result of the election to the commissioner.

WV Legislature

§60-5-7. Discontinuance of state stores and agencies in local option territory.

Within 30 days after a local option election in which a majority has voted No, the commissioner shall order the closing of all stores selling alcoholic liquor for off-premises consumption within the county, or municipality.

WV Legislature

§60-5-8. When another election may be held.

When a local option election has been held in a county, or municipality, another such election may not be held for a period of two years.

WV Legislature

§60-5-9. Allowing state-wide off premises of alcoholic liquors; exceptions; procedures.

(a) Effective July 1, 2020, the sale of alcoholic liquors for off-premises consumption is authorized in all counties and municipalities of the state.

(b) Notwithstanding the provisions of subsection (a) of this section, a county or municipality which prior to January 1, 2020, prohibited the sale of alcoholic liquors for off-premises consumption may, pursuant to this subsection, hold a local option election to maintain the prohibition against the sale of alcoholic liquors for off-premises consumption without the petition required by the provisions of §60-5-2 of this code, if it enters an order to hold a local option election on the issue on or before July 1, 2020, in which event the election shall be held concurrent with the 2020 general election. The county commission or municipality may require the state to reimburse it for the actual cost of conducting the local option election authorized by this subsection: *Provided*, That, as an alternative to the local option election authorized by this subsection, the county commission or governing body of a municipality which prior to January 1, 2020, had prohibited the sale of alcoholic liquors for off-premises consumption may vote to maintain the prohibition and provide certification of the result of the vote to the commissioner on or before July 1, 2020.

(c) A county or municipality which prohibits the sale of alcoholic liquors for off-premises consumption pursuant to subsection (b) of this section may later reconsider its action using the procedures set forth in §60-5-1 *et seq.* of this code.

WV Legislature

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee, or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

(3) The holder of a winery or a farm winery license from serving samples of its wine on the winery or the farm winery premises; and

(4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving samples of its alcoholic liquor on the distillery, mini-distillery, or micro-distillery premises.

WV Legislature

§60-6-2. When lawful to manufacture and sell wine and cider.

The provisions of this chapter may not prevent:

(1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by §60-6-1 of this code.

(2) A person from manufacturing and selling unfermented cider;

(3) A person from manufacturing and selling cider made from apples produced by him or her within this state to persons holding distillery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(4) A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons holding winery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(5) The holder of a winery or a farm winery license from selling wine for off-premises consumption sold at retail at the winery or the farm winery, as provided in §60-3B-4 of this code, or for any other person who is licensed under this chapter to sell wine as a wine supplier or distributor; and

(6) The holder of a distillery, mini-distillery, or micro-distillery license from selling alcoholic liquor for off-premises consumption sold at retail at the distillery, mini-distillery, or micro-distillery, as provided in §60-3A-4 of this code.

WV Legislature

§60-6-3. Applicability of chapter to certain uses of ethyl alcohol.

The provisions of this chapter relating to state monopoly shall not apply to ethyl alcohol used:

(1) For scientific, chemical, mechanical or industrial purposes;

(2) By those authorized to procure ethyl alcohol tax free under the acts of Congress and regulations thereunder;

(3) In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations thereunder;

(4) In the manufacture of scientific, chemical, mechanical and industrial preparations or products unfit for beverage purposes;

(5) By those authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use pursuant to section seven-a, article four of this chapter.

Nothing in this section shall be so construed as to exempt such users of ethyl alcohol from the license and transportation provisions of this chapter.

WV Legislature

§60-6-4. Permitted use by druggists.

The provisions of this chapter shall not prevent a person from manufacturing, selling, delivering or shipping:

Any medicine containing sufficient medication to prevent its use as a beverage;

Any medicinal preparation manufactured in accordance with formulas prescribed by the United States pharmacopoeia, and national formulary, patent and proprietary preparations, and other bona fide medical and technical preparations, which are manufactured and sold to be used exclusively as medicine and not as beverages, and the sale of which does not now require the payment of a United States liquor dealer's tax;

Toilet, medicinal and antiseptic preparations not intended for internal human use nor for beverage purposes;

Any food products known as flavoring extracts manufactured and sold for cooking and culinary purposes only and not for beverage purposes;

Nor shall such provisions prevent pharmacists, retail druggists or drugstores employing a duly licensed pharmacist, from purchasing or causing to be shipped to their place of business ethyl alcohol for use in compounding or manufacturing any of the medical or other preparations enumerated in this section, as provided in section six, article four of this chapter.

WV Legislature

§60-6-5. Applicability of chapter to certain uses by physicians, druggists and others.

The provisions of this chapter shall not prevent:

(1) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;

(2) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;

(3) A physician, dentist, or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;

(4) Hospitals, sanitariums, or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary, from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;

(5) Religious organizations from using wine for sacramental purposes.

WV Legislature

§60-6-6. Transporting alcoholic liquor in excess of ten gallons.

The provisions of this chapter shall not prevent a person from bringing into or transporting in this state, in his possession or in his baggage, and not for resale, alcoholic liquor in a quantity not to exceed ten gallons: Provided, That upon written permission of the commissioner, quantities of alcoholic liquor in excess of ten gallons may be transported within this state.

WV Legislature

§60-6-7. Specific acts forbidden; indictment.

A person shall not:

(1) Manufacture or sell in this state without a license any alcoholic liquor, except as permitted by this article;

(2) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by this article;

(3) Sell or tender without a license any alcoholic liquor other than permitted by this article;

(4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

(5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;

(6) Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commissioner; or

(7) Distribute, deal in, process, or use crowns, stamps, or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the commissioner; or

(8) Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship, use, or in any other manner provide or furnish powdered alcohol.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 nor more than $500, or confined in jail not less than 30 days nor more than one year or both such fine and imprisonment, for the first offense. Upon conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in the penitentiary for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

An indictment for any first violation of subdivisions (1), (2), and (3) of this section, or any of them, shall be sufficient if in form or effect as follows:

State of West Virginia

County of ....., to wit:

The Grand Jurors of the State of West Virginia, in and for the body of the County of .....,

WV Legislature

upon their oaths present that ....., on the ..... day of ....., 20...., in the said County of ....., did unlawfully, without a State license and without authorization under the Alcohol Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a quantity of alcoholic liquor, against the peace and dignity of the state.

Any indictment under this section shall otherwise be in conformity with §62-9-1 et seq. of this code.

WV Legislature

§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which the license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture of the wine under rules of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by its license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with the commissioner and has paid a $1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by the private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and the liquor bottle shall be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless the licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: *Provided,* That a licensee may sell, furnish, tender, and serve up to 15 recipes of pre-mixed beverages consisting of alcoholic liquors and nonalcoholic mixer, in a manner approved by the commissioner and in accord with public health and safety standards:

(A) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(B) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made; and

(C) The licensee shall maintain a written record reflecting the cleaning and sanitizing of the

WV Legislature

storage and dispensing equipment for inspection by the commissioner and health inspectors;

(D) A violation or violations this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under this chapter or §11-16-1 *et seq*. of this code;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not less than 30 days nor more than one year, or both fined and confined for the first offense. Upon conviction of a second or subsequent offense, the court may impose a penalty of imprisonment in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

WV Legislature

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person may not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Tender a drink of alcoholic liquor to another person in a public place;

(4) Operate a business without a license issued under §60-1-1 et seq. of this code which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice, and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a "bring your own bottle", "bring your own booze", or "BYOB" establishments;

(5) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of a citation, transport the individual to the individual's present residence, or arrange for the transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

WV Legislature

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;

(2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested, or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than $5 nor more than $100. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours' duration at the nearest community mental health – mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than $5 nor more than $100 and not more than 60 days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health – mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than $5 nor more than $100 and not less than five nor more than 60 days in jail or a fine of not less than $5 nor more than $100 and completion of not less than five hours of alcoholism counseling at the nearest community mental health – mental retardation center: *Provided*, That three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health – mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to

WV Legislature

complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 et seq. and §27-6A-1 et seq. of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100; and upon a second or subsequent conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100, or confined in jail not more than 60 days, or both.

(i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than $100 nor more than $500; and upon conviction of second or subsequent offense, he or she is guilty of a felony and, shall be confined in a state correctional facility for a period of not less than one year nor more than three years.

WV Legislature

§60-6-10. Unlawful operation of plant manufacturing distilled spirits; exception for personal consumption.

(a) A person who unlawfully owns, operates, or maintains a plant for the manufacture of distilled spirits, or aids or abets in the operation or maintenance of such a plant shall be guilty of a felony and, upon conviction shall be fined not less than $100 nor more than $1,000 or confined in the penitentiary not less than one nor more than five years.

(b) Notwithstanding the restriction of subsection (a) of this section, a person at least 21 years of age may manufacture alcoholic liquor for personal or family use. The aggregate amount of alcoholic liquor manufactured per household may not exceed 10 gallons per calendar year, if there are two or more persons over the age of 21 years, or 5 gallons per calendar year, if there is only one person over the age of 21 years in the household. Any alcoholic liquor manufactured under this section may not be sold or offered for sale.

WV Legislature

§60-6-11. Unlawful manufacture, etc., while armed.

A person who, while engaged in the unlawful manufacture, transportation or sale of alcoholic liquors, or while aiding or assisting in any of such acts, has in his actual or constructive possession a firearm or other lethal weapon, shall be guilty of a felony and, upon conviction shall be confined in the penitentiary not less than one nor more than ten years.

WV Legislature

§60-6-12. Transportation of alcoholic liquors into or through state; permits; bond of permittee.

The commission may adopt regulations governing the transportation of alcoholic liquors, lawfully acquired, within, into or through the state in quantities in excess of one gallon as it may deem necessary to confine such transportation to legitimate purposes and may issue transportation permits in accordance with such regulations, collect a fee therefor, and shall require each person to whom such a permit is issued to furnish a bond in such form and amount and with such surety as the commission shall direct, conditioned that he will exercise the privileges granted by such permit in conformity with the provisions of this chapter and the regulations of the commission, or in default thereof forfeit to the state school fund the sum of $100 for each breach recoverable by motion upon ten days' notice in any court having jurisdiction of the parties.

A person who, without authorization under this chapter, transports alcoholic liquors in quantities in excess of one gallon or in any amount for the purpose of sale or in any amount manufactured or acquired contrary to the provisions of this chapter, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than one hundred nor more than $500, or confined in jail not to exceed one year, or both such fine and imprisonment for the first offense. Upon conviction of a second or subsequent offense, he shall be guilty of a felony and, confined in the penitentiary of this state for a period of not less than one nor more than three years.

WV Legislature

§60-6-13. Restrictions on importing into, and transporting liquors in state.

Except as permitted by section six of this article and article eight of this chapter, a person shall not import into, or transport in this state, any alcoholic liquors, unless it is:

(1) Consigned to the commission;

(2) Transported upon the direction of the commission directly to persons licensed to receive alcoholic liquors at wholesale; or

(3) Transported into the state or through the state to persons outside the state upon transportation permits issued by the commissioner.

WV Legislature

§60-6-14.

Repealed.

Acts, 1937 Reg. Sess., Ch. 14.

WV Legislature

§60-6-15. Penalties for violations not otherwise specified.

A person who violates any order, rule or regulation of the commission made under the authority of this chapter, or who violates any provisions of this chapter for which punishment has not been specifically provided, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $10 nor more than $500 or confined in jail not less than five days nor more than six months, or by both such fine and imprisonment.

If, by the provisions of this chapter, conflicting penalties are prescribed for an offense, the section providing for the heavier penalty shall control.

WV Legislature

§60-6-16. Places deemed common and public nuisances; abatement; conspiracy.

A place where alcoholic liquor is manufactured, sold, stored, possessed, given away, or furnished contrary to law shall be deemed a common and public nuisance. Boats, cars (including railroad and traction passenger cars operating in this state), automobiles, wagons, water and aircraft, beasts of burden, or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of section seventeen of this article. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common and public nuisance shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500, or by confinement in jail not less than sixty days nor more than six months for each offense, and judgment shall be given that such nuisance be abated or closed as a place for the manufacture, sale, storage, possession, giving away, or furnishing contrary to law of alcoholic liquor, as the court may determine.

If two or more persons conspire to maintain such common and public nuisance or to distill, manufacture, store, transport, sell, give away, or furnish alcoholic liquor in violation of any of the provisions of this chapter, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500 or by confinement in jail for not less than one month nor more than six months, or in the discretion of the court, by both such fine and imprisonment.

WV Legislature

§60-6-17. Suit to abate nuisances; injunction.

The commission, its agents, the Attorney General, the prosecuting attorney, or a citizen of the county or municipality where a nuisance as defined in section sixteen of this article is located, may maintain a suit in equity in the name of the state to abate and perpetually enjoin the same. Courts of equity shall have jurisdiction thereof. The injunction may be granted at the commencement of the suit and no bond shall be required. On the finding that the material allegations of the bill are true, the court or judge thereof in vacation shall order the injunction for such period of time as it or he may think proper, with the right to dissolve the injunction upon the application of the owner of the place, if a proper case is shown for such dissolution.

The continuance of the injunction as provided in this section may be ordered, although the place complained of may not at the time of hearing be unlawfully used.

WV Legislature

§60-6-18. Search warrants.

If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that alcoholic liquors are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place in violation of law, the justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic liquors. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants.

Warrants issued under this chapter for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for alcoholic liquor, may be executed in any part of the state where the same are overtaken, and shall be made returnable before any justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported contrary to law.

An officer charged with the execution of a warrant issued under this section, may, whenever it is necessary, break open and enter a house, or other place herein described.

WV Legislature

§60-6-19. Forfeiture of stills, etc.

All stills and distilling apparatus and material for the manufacture of the same, and all alcoholic liquors, and materials used in the manufacture of alcoholic liquors, and all containers in which alcoholic liquors may be found, which are kept, stored, possessed or in any manner used in violation of the provisions of this chapter shall be deemed contraband and shall be forfeited to the state.

WV Legislature

§60-6-20. Contraband conveyances; forfeiture and disposition.

A conveyance of any kind, either on land, water, or in the air, used for transportation of alcoholic liquors in violation of section twelve of this article, shall be deemed contraband and shall be forfeited to the state and proceeded against in the manner provided for confiscation by section twenty-one of this article.

Any such conveyance forfeited to the state under the provisions of this section shall be turned over to the commission, which may retain the same for public use in the administration and enforcement of this chapter. If it has no need for the conveyance, it may order its destruction or sale unless the department of public safety requests it, in which case the commission shall turn it over to the said department.

The net proceeds of sales made under this section shall be paid into the State Treasury in the manner prescribed for receipts from state stores and agencies.

WV Legislature

§60-6-21. Court procedure as to contraband and forfeited articles.

Proceedings for confiscation of articles, conveyances or vehicles declared contraband and forfeited to the state under section twenty shall be had in the circuit or inferior court having criminal jurisdiction, either in vacation or term time, in the county where such articles, conveyances or vehicles were seized, and the procedure shall be as follows:

(1) When such articles, conveyances or vehicles have been seized under or without a warrant provided for in section eighteen of this article, by an officer charged with the enforcement of this chapter, the officer shall take possession of such article, conveyance or vehicle and deliver the same and the alcoholic liquors so seized to the sheriff of the county in which such seizure was made, taking his receipt therefor in duplicate.

(2) The officer making such seizure shall forthwith report in writing of such seizure to the prosecuting attorney of the county in which such seizure was made and to the commission.

(3) Within not less than ten days nor more than sixty days after receiving notice of any such seizure, the prosecuting attorney for the county shall file, in the name of the state, a petition against the seized property, in the clerk's office of the circuit court of the county, returnable to the circuit court or inferior court having criminal jurisdiction, which petition shall be filed by the clerk without fee and may be heard by said court or judge thereof in vacation.

(4) Such petition shall allege the seizure, and set forth in general terms, the grounds of forfeiture of the seized property, and shall pray that the same be forfeited to the state and the proceeds disposed of according to law, and that all persons concerned or interested may appear and show cause why said property should not be forfeited to the state.

(5) The owner of and all persons in any manner then indebted or liable for the purchase price of said property, and any person having a lien thereon, if they be known to the prosecuting attorney, shall be made parties defendant thereto, and shall be served with the notice issued by the clerk of such court, hereinafter provided for in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on said petition, if they be residents of this state, and, if they be unknown or nonresidents, or cannot with reasonable diligence be found in this state, they shall be deemed sufficiently served by publication of said notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be said county.

(6) Any person claiming to be the owner of such seized property, or to hold a lien thereon or have an interest therein, may appear at any time before final judgment of the trial court, and be made a party defendant to the petition so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim or interest.

(7) If the court or judge thereof in vacation shall find that illegally acquired alcoholic liquors

WV Legislature

or alcoholic liquors being illegally transported in amounts in excess of one gallon, were not found in such conveyance or vehicle at the time of the seizure thereof, the judgment of the court shall be to entirely relieve said property from forfeiture, and no costs shall be taxed against such claimant.

(8) If the court or judge thereof in vacation trying the issue shall find or if it be admitted that said conveyance or vehicle at the time of the seizure contained illegally acquired liquor or that alcoholic liquors were being illegally transported therein, nevertheless:

(a) If it shall appear to the satisfaction of the court that such claimant is the bona fide owner and was such owner at the time of such seizure and that he was ignorant of such illegal use thereof and the illegal use was without his connivance or consent, expressed or implied, the court shall relieve said conveyance or vehicle from forfeiture and restore it to such claimant and no cost shall be taxed against such claimant,

(b) If it shall appear to the satisfaction of the court that such claimant is the holder of a bona fide lien against the property and was the holder of such lien at the time of such seizure and that he was ignorant of such illegal use thereof, or the use so made of such conveyance or vehicle was without his connivance or consent, expressed or implied, and that the claimant has perfected his lien, the court shall,

(1) If the lien so established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor upon the payment of storage and cost,

(2) If the lien is less than the value of the conveyance or vehicle, the lienor may have said conveyance or vehicle delivered to him upon payment of the difference in amount as determined in such proceedings; but should the lienor not demand delivery as aforesaid, an order shall be made for the sale of said property by the sheriff of the county, in the manner prescribed by law for sale of personal property under execution, out of the proceeds of which sale shall be paid, first, the storage, if any, second, the cost, third, the lien, and the residue, if any, shall be paid to the commission.

(9) If, however, no valid lien or claim is established against the seized property upon the trial of the petition, or, if it shall be determined that the owner thereof was himself using the same at the time of the seizure or that such illegal use was with his knowledge or consent, expressed or implied, the said property shall be completely forfeited to the state and turned over to the commission in accordance with the provisions of this chapter.

(10) In every case, the alcoholic liquors so seized shall be deemed contraband and forfeited to the state as heretofore provided.

WV Legislature

§60-6-22. Action to recover price of liquors sold unlawfully.

No action shall be maintained to recover the price of alcoholic liquor sold in violation of the provisions of this chapter, except that the state or the commission may recover from any person the price of any alcoholic liquor purchased by him in violation of this chapter, and from any person who may have sold alcoholic liquors in violation of the provisions of this chapter, the consideration received by him therefor.

WV Legislature

§60-6-23. Treatment of minors for addiction to alcoholic liquor and beer.

Notwithstanding any other law to the contrary, any licensed physician may examine, counsel, diagnose and treat any minor at his or her request for any addiction to or dependency upon the use of alcoholic liquor or nonintoxicating beer, as defined in section five, article one of this chapter, without the knowledge or consent of the minor's parent or guardian. Such physicians shall not incur any civil or criminal liability in connection therewith except for negligence or willful injury.

WV Legislature

§60-6-24. Requirement for posting informational sign.

Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine, hard cider, nonintoxicating beer or nonintoxicating craft beer for either on-premises or off-premises consumption, shall post in an open and prominent place within the establishment, a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, as provided in the chart available on the commissioner's website. Enforcement of the posting provisions of this section shall be carried out by the commissioner for all licensees required to post the notice.

WV Legislature

§60-6-25. Mandatory signs to be posted warning of the possible dangers of consumption of alcohol during pregnancy.

(a) Beginning July 1, 1998, all persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail, either for consumption on-premises or off-premises, or both, shall display signs provided by the Alcohol Beverage Control Commissioner warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy. These signs shall be displayed upon the licensed premises in the following manner:

(1) If a licensee holds a license providing for the retail sale of alcoholic liquor, wine or nonintoxicating beer for on-premises consumption, the sign shall be posted in an open and prominent place in the licensed portion of the establishment: Provided, That self-service "mini-bars" in hotel guest rooms are exempt: Provided, however, That airports, convention centers, sports facilities and other licensed premises with more than one authorized location of sales, service and consumption shall post signs in plain view to the majority of patrons entering or approaching the licensed portion of the premises.

(2) If the licensee holds a license providing for the retail sale of alcoholic liquor, wine or nonintoxicating beer for off-premises consumption, the sign shall be posted in plain view at the main entrance to the licensed premises.

(3) If the licensee is a liquor manufacturer, the notices shall be posted in plain view at the main entrance to areas where alcohol is sold for off-premises consumption. If a manufacturer's tasting rooms have separate buildings or separate entrances, the sign shall be posted in plain view at the main entrance to the tasting area.

(b) The Alcohol Beverage Control Commissioner shall make signs and replacements warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy available to each licensee governed by the provisions of this section.

(c)(1) Upon a determination by the commissioner that a licensee has failed to comply with the provisions of this section, the commissioner may impose a civil administrative penalty of not less than $100 nor more than $1,000 for each violation. The provisions of section fifteen of this article shall not apply to a violation of this section.

(2) The commissioner shall propose legislative rules for promulgation pursuant to the provisions of chapter twenty-nine-a of this code setting forth:

(A) Objective criteria against which the exercise of the commissioner's discretion in the determination of whether to impose a civil administrative penalty is to be measured; and

(B) Procedures meeting the requirements of due process through which an alleged violation of this section may be contested.

(3) The proceeds of civil administrative penalties collected for violations of this section shall

WV Legislature

be deposited in a fund hereby established in the State Treasury to be known as the "fetal alcohol syndrome fund". The commissioner shall expend the moneys deposited in the fund to educate the public concerning the dangers of fetal alcohol syndrome without appropriation except as provided in this subsection. After the sum of $5,000 has been deposited into the fund during a fiscal year, any additional deposits shall be divided as follows: (1) An amount necessary to allow the commissioner to carry out his or her duties pursuant to this section, not to exceed one half of such additional deposits, shall be deposited in the alcohol beverage control administration fund; and (2) the remainder of such additional deposits shall be made to the state fund, general revenue. Any moneys remaining in the fund on June 30 of each year shall be subject to reappropriation for expenditure during the following fiscal year. The commissioner shall annually file a report with the President of the Senate and the Speaker of the House of Delegates, informing the Legislature as to the amounts deposited in the funds, and the purposes for which the amounts deposited in the alcohol beverage control administration fund were expended.

WV Legislature

§60-6-26. Conditional discharge for first offense of certain offenses related to nonintoxicating beer or alcoholic liquor.

(a) When a person pleads guilty to or is found guilty of a violation of subdivision (1), subsection (a), section nineteen, article sixteen, chapter eleven of this code; subsection (b), section nineteen, article sixteen, chapter eleven of this code; subsection (a), section twenty-two-a, article three of this chapter; subdivision (1), subsection (a), section twenty-four, article three-a of this chapter; subsection (b), section twenty-four, article three-a of this chapter; subsection (a) or (b), section twelve-a, article seven of this chapter; or subsection (a) or (b), section twenty-a, article eight of this chapter, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions it considers appropriate, if the person has not previously been convicted of:

(1) Any of the offenses contained in the code provisions referenced in this subsection; or

(2) Any statute of the United States or of any state relating to underage purchase, consumption, sale, service or possession of nonintoxicating beer or alcoholic liquor.

(b) If the person violates a term or condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

(c) Upon fulfillment of the terms and conditions of the probation, the court shall discharge the person and dismiss the proceedings against him or her.

(1) Discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or the section of the original charge, or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(2) The effect of the discharge and dismissal is to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial.

(3) A person to whom a discharge and dismissal have been effected under this section may not be found guilty of perjury, false swearing or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial relating to a charge discharged and dismissed by this section in response to any inquiry made of him or her for any purpose.

(d) There may be only one discharge and dismissal under this section with respect to any one person.

(e) After a period of not less than six months after the expiration of a term of probation imposed upon a person under the provisions of this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial and discharge pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period prior to his or her

WV Legislature

application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(f) Notwithstanding any provision of this code to the contrary, any person prosecuted for an alleged violation of an offense listed in subsection (a) of this section, whose case is disposed of pursuant to the provisions of this section, is liable for all court costs assessable against a person convicted of a violation of the section under which the person was prosecuted. Payment of the costs may be made a condition of probation. The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty of this code; section four, article two-a, chapter fourteen of this code; section four, article twenty-nine, chapter thirty of this code; and sections two, seven and ten, article five, chapter sixty-two of this code.

WV Legislature

§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.

WV Legislature

§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

www.legislature

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

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

WV Legislature

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

WV Legislature

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,

WV Legislature

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:

WV Legislature

(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

WV Legislature

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

WV Legislature

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

WV Legislature

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;

www.Legislature

(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

WV Legislature

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;

WV Legislature

(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;

WV Legislature

(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

WV Legislature

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

WV Legislature

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

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

WV Legislature

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

WVLegislature

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

WV Legislature

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,

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WVLegislature

(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

WV Legislature

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.

WV Legislature

(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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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

WV Legislature

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

WV Legislature

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.

WV Legislature

§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

WV Legislature

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

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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

WV Legislature

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

WV Legislature

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.

WV Legislature

(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.

WV Legislature

§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

WV Legislature

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

WV Legislature

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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§60-7-9.

Repealed.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§60-7-17. Repealer.

[Repealed.]

WV Legislature

§60-8-1. Construction and application of article.

(a) Every supplier must use a distributor to distribute wine for retail sale in this state, except for such sales that occur by wineries, farm wineries or suppliers holding a direct shipper's license or farm wineries holding a multicapacity farm winery license. The provisions of Part II of this article shall have general application to the distribution and retail sale of wine in this state. The provisions of Part III of this article shall relate solely to the distribution and the regulation of suppliers and distributors of such wines as may be permitted to be sold at retail pursuant to the provisions of this article. The provisions of Part IV of this article shall relate solely to the retail sale of wine in grocery stores as the term "grocery store" is defined in this article and the retail sale of wine in wine specialty shops as defined in this article. In the event of any inconsistency of any provisions of Part II and the provisions of either Part III or Part IV of this article, the provisions of either Part III or Part IV shall prevail to the extent of such inconsistency.

(b) In the event of any inconsistency between any of the provisions of this article and provisions of any other article of this chapter or of this code, the provisions of this article shall prevail to the extent of any such inconsistency.

(c) To the extent the provisions of this chapter exclusive of this article may be given application without creating an inconsistency with the provisions of this article, the provisions of this chapter, exclusive of this article, shall apply to the same extent as if this article did not exist.

WV Legislature

§60-8-2. Definitions.

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

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

"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry, and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq*. of this code.

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

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

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

"Hard Cider Distributor" means any person whose principal place of business is within the

State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq*. of this code.

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

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

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

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

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Private clubs that meet the private wine restaurant requirements in this definition shall be considered private wine restaurants: *Provided*, That, a private wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom requirement may be waived by a written waiver provided from a local health

WV Legislature

department to the commissioner: *And provided further*, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: *And provided further*, That in no event shall a private wine restaurant have less than one restroom: *And provided further*, That a winery or farm winery holding a private wine restaurant license or a multi-capacity winery or farm winery license is not subject to the food service requirements of this subdivision.

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

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

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

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

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

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

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

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

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to

WV Legislature

which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 24 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

WV Legislature

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person except for a winery or farm winery holding a multi-capacity winery or farm winery license may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person except for a winery or farm winery or holding a multi-capacity winery or farm winery license may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier’s license;

(2) Two thousand five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location, the annual license fee of $2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer’s license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate

WV Legislature

restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) One hundred fifty dollars per year for a direct shipper's license for a licensee who sells and ships only wine and $250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines;

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor, then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the fee shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq*. of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq*. of this code: *Provided*, That a delicatessen, a caterer, or party supply store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing

WV Legislature

the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any fair or festival which is endorsed or sponsored by the governing body of a municipality or a county commission. The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license is $250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the any fair or festival.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the fair or festival license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is $50 per fair or festival.

(3) A licensed winery or a farm winery, which has the fair or festival licensee's written authorization and approval from the commissioner, may, in addition to, or in conjunction with the fair and festival licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed six, three-fluid ounce, tastings or samples per patron, or serve wine by the glass for consumption on the premises during the operation of a fair or festival only; and may sell wine by the bottle for on-premises consumption, when consumed by the glass, and sealed bottles of wine for off-premises consumption: *Provided*, That for licensed wineries or farm wineries at a licensed fair or festival; tastings, samples, on-premises sales, and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

(4) A fair or festival license may be issued to a "wine club" as defined in this subdivision for a license fee of $250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the fair or festival and the words "wine club". The license shall be issued in the name of the wine club. A licensee may not sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this

WV Legislature

subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on-premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail licensee or private club licensee. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a fair or festival under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed fair or festival, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each fair or festival, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery is subject to the same limits, fees, requirements, restrictions, and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each fair or festival. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a professional baseball stadium. For the purpose of this subsection, “professional baseball stadium” means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this

subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders required by the circumstances of each professional baseball stadium. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of the wine off premises: *Provided, however*, That a licensed private wine restaurant or a private club may offer for sale, for consumption off-premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off-premises. The licensees may keep and maintain on its premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq*. of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall

WV Legislature

propose legislative rules for promulgation in accordance with §29A-1-1 *et seq*. of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of §29A-1-1 *et seq*. of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A licensed wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at its location during regular hours of business. The wine specialty shop may serve up to six complimentary samples of wine, consisting of no more than three fluid ounces each, to any one consumer per day. Persons serving the samples shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. “Auction or auctioning”, for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq*. of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly

WV Legislature

organized, nonprofit corporation or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, sell samples not to exceed six, three-fluid ounce tastings or samples per patron, sell wine by the glass or by the bottle, when consumed by the glass, for consumption on-premises during the operation of the one-day license event and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples, on-premises sales, and off-premises sales of its wine shall occur under the hours of operation permitted by this article, except on Sunday, tastings, samples, on-premises sales, and off-premises sales of its wine are unlawful between the hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections.

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, that is duly licensed in its domicile state, may pay a $150 nonrefundable and non-prorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and any other information as the commissioner may reasonably require: *Provided*, That the background investigation requirement set forth in §60-8-16 of this code is inapplicable to licenses authorized by this subdivision.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold by the glass or bottle, when consumed by the glass, for on-premises consumption or in sealed containers for off-premises consumption at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list creates a temporary wine brand registration for up to two special one-day licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event shall provide the commissioner a signed and notarized written agreement acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

www.legislature

(5) An application must be submitted for each special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day licenses for nonprofit events before an additional fee is required. In no circumstance would the winery be permitted to attend more than four special one-day licensed events. Any applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations contained in this section.

(7) The applicant winery shall also apply for and receive a transportation permit to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each fair or festival. The commissioner may revoke or suspend any license issued pursuant to this article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college or university stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college or university stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate

WV Legislature

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 sales must take place within the confines of the college or university stadium: *Provided*, That the exterior of the area where wine sales may occur 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 wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college or university stadium. The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code to implement this subsection.

WV Legislature

§60-8-3a. Certain wine specialty shops operating as grocery stores authorized to deliver wine curbside, mobile applications, or web-based sales allowed; permits; fees.

A wine specialty shop which is licensed to sell wine off premises and which operates a grocery store containing over $100,000 of fresh produce and saleable food and food products fit for human consumption in a combination of displayed and stored inventory may apply for a Class B license privilege granting the licensee the ability to complete the sale of such wine in the original sealed container for off-premises consumption to a person purchasing wine ordered via a mobile application or web-based software program and picking up the wine from the licensee while in a vehicle:

(a) If the vehicle is parked in a licensed parking area which is contiguous to the Class B licensee's licensed premises; or

(b) If the vehicle is parked in a licensed parking area which is within 500 feet of the Class B licensee's licensed premises;

(c) The parking area referenced in subdivision (b) of this section shall be designated by signage solely for the use of persons who have previously ordered items, including, but not limited to, wine using a mobile application or web-based software program;

(d) No wine may be loaded into a vehicle under this section unless the wine specialty shop or the licensee's staff have verified that both the person placing the order and the person picking up the order, if different from the person placing the order, is 21 years of age or older and is not noticeably intoxicated;

(e) To operate under this section a wine specialty shop must be in good standing with the commissioner, apply, qualify, pay the Class B license privilege fee, and obtain the permit for the Class B licensee privilege for wine at a designated parking area. The Class B license privilege permit is nonrefundable and a nonprorated annual fee is $250;

(f) The licensee is subject to all requirements, penalties, and sanctions of this article.

WV Legislature

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month also subjects a supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

No wine imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.

WV Legislature

§60-8-5. Refund or credit of taxes.

The Tax Commissioner shall refund, or credit on a subsequent return, any tax which has been erroneously or illegally collected. In the event that a licensee, while the owner of wine on which the tax imposed by this article has been paid, loses such wine through fire or casualty, other than breakage occurring on the premises of the licensee because such wine has been declared by the commissioner to be unfit for sale and the amount of tax paid exceeds $50, the Tax Commissioner shall refund the tax paid. The commissioner shall promulgate regulations establishing the procedure and nature of proof required in case of any claim for refund or credit.

WV Legislature

§60-8-6. License or registration required for sale or shipment of wine; shipment of limited quantities of wine to adult residents permitted.

(a) Except as to the commissioner and except as provided in subsection (b) of this section, no person may offer for sale or sell wine in this state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article. Every person, whether resident or nonresident in this state, who is engaged in or desires to engage in the sale or shipment of wine to a distributor for resale under this article shall, prior to engaging in such activities, register with the commissioner. If any such person violates the provisions of this article, he shall not be permitted to sell, ship or deliver any wine to a distributor or to the commissioner, or otherwise engage in the wine business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any distributor within this state to buy or receive wine from such person or to have any dealings with such person with respect thereto. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses under this article.

(b) Notwithstanding the provisions of this chapter or any other law to the contrary, any person or winery that is currently licensed and in good standing in its domicile state as a winery, farm winery, supplier or retailer of wine and who obtains a direct shipper's license from the commissioner, as provided in this chapter, may ship up to a maximum of two cases of wine per month directly to adult West Virginia residents who are twenty-one years of age or over, for such adult resident's personal use and consumption and not for resale. Licensed direct shippers must maintain accurate records of all shipments sent to West Virginia residents. All shipments of wine into West Virginia by licensed direct shippers shall be made by a licensed and bonded shipping carrier. Direct shippers and their carriers shall not ship wine to areas of West Virginia where wine may not be lawfully sold by county, local or municipal law. Any holder of a direct shipper's license must collect all taxes, sales taxes, municipal taxes and the liter tax due to West Virginia, remit all sales, municipal taxes and the liter tax to the Tax Commissioner at the close of each month and file a monthly return reflecting the taxes paid for all sales and shipments to residents in West Virginia. The commissioner shall prescribe the forms to be used to file the monthly returns. The shipping container of any wine sent into or out of this state under this subsection shall be clearly and conspicuously labeled to indicate that the package cannot be delivered to: (1) Any person under the age of twenty-one; (2) to an intoxicated person; or (3) to a person physically incapacitated due to the consumption of nonintoxicating beer, wine or alcoholic liquors or the use of drugs; and (4) the carriers are required to obtain a written or electronic signature upon delivery of an adult resident who the carrier verifies is at least twenty-one years of age or older and if the carrier is not able to obtain a signature of a verified adult resident at least twenty-one years of age or older, then the carrier may not complete the delivery of the wine shipment. Failure of any holder of a direct shipper's license or such licensee's carrier to abide by the provisions of this chapter and the commissioner's rules may subject the direct shipper to the penalties available to the commissioner under section eighteen of this article.

WV Legislature

§60-8-6a. Direct shipper's license.

(a) Before sending any shipment of wine to a resident of West Virginia, the direct shipper must first:

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

(2) Pay to the commissioner either the $150 license fee to ship and sell only wine, the $250 license fee to ship and sell wine and nonfortified dessert wine, port, sherry or Madeira wines, or the $300 multicapacity winery or farm winery license fee;

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

(4) Register with the office of the Secretary of State, if a corporation;

(5) Provide the commissioner a true copy of its current alcoholic beverage license issued in the state of domicile, proving that the direct shipper is licensed in its state of domicile as a winery, farm winery, supplier or retailer of wine;

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

(7) Submit to the commissioner a list of all brands of wine to be shipped to West Virginia residents; and

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

(b) All direct shipper licensees shall:

(1) Not ship more than two cases of wine per month to any person. A case is defined as any combination of packages containing not more than nine liters of wine;

(2) Not ship to any address in an area identified by the commissioner as a "dry" or local option area where it is unlawful to sell wine or alcoholic liquors;

(3) Not ship to any licensed suppliers, distributors, retailers, private wine bed and breakfasts, private wine restaurants, private wine spas or wine specialty shops;

(4) Not ship wine from overseas or internationally unless it is first shipped to a licensed supplier or distributor;

(5) Ensure that all containers of wine shipped directly to a resident in this state are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON

WV Legislature

21 OR OLDER REQUIRED FOR DELIVERY";

(6) File monthly returns to the commissioner and the Tax Commissioner showing the total of wines, by type, sold and shipped into West Virginia for the preceding month;

(7) Pay to the Tax Commissioner all sales taxes, municipal taxes and the liter tax due on sales and shipments to residents of West Virginia in the preceding month, the amount of such taxes to be calculated as the sales were made in West Virginia at the location where delivery is made;

(8) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the direct shipper's records upon request;

(9) Be deemed to have consented to the jurisdiction of the commissioner or any other state agency, the Kanawha County circuit court located in Charleston, West Virginia, concerning enforcement of this article and any other related laws, rules; and

(10) Provide proof or records to the commissioner, upon request, that all direct shipments of wine were purchased and delivered to an adult resident of West Virginia over the age of twenty-one years of age.

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

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

(e) The commissioner may enforce the requirements of this section by administrative proceedings to suspend or revoke a direct shipper's license, and the commissioner may accept payment of a penalty or an offer in compromise in lieu of suspension, at the commissioner's discretion.

(f) Shipments of wine direct to consumers in West Virginia from persons who do not possess a current direct shipper's license or other permit or license from the commissioner are prohibited. Any person who knowingly makes, participates in, transports, imports or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation or shall be imprisoned in jail for a period not to exceed seventy-two hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives such a direct shipment constitutes an act that is an unfair trade practice.

WV Legislature

§60-8-6b. Deliveries by licensed wine specialty shop.

(a) A wine specialty shop with a current active license and in good standing with the commissioner may apply for the additional license privilege of delivering wine with a gift basket, to the purchaser or other person designated by the purchaser, as provided in this section.

(b) The wine specialty shop:

(1) May only deliver in the county where the wine specialty shop is located with all sales and municipal taxes accounted for and paid, as long as such county is not a dry county or such county does not contain dry local option areas. The delivery of wine is not permitted in a dry county or the dry local option areas;

(2) Shall ensure that all wine delivered is sealed in the original container and is clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

(3) Shall provide proof or records to the commissioner by filing monthly returns to the commissioner, on a form as prescribed by the commissioner, and the Tax Commissioner of all deliveries of wine which were purchased by and delivered to a person at least 21 years of age in the wine specialty shop's county of operation;

(4) Shall only deliver wine with a gift basket to addresses within the State of West Virginia and within the requirements noted in this subsection;

(5) Shall not deliver in excess of two cases of wine with a gift basket per month to any person or address;

(6) Shall not deliver wine to any private club, private wine restaurant, wine retailer, private wine bed and breakfast, or private wine spa; and

(7) May only deliver wine with a gift basket for personal use and not for resale to a person. The wine shall not be delivered and left at any address without verifying a person's age and identification as required in this section.

(c) The nonprorated, nonrefundable fee for the additional wine specialty shop delivery license privilege is $250.

(d) The wine delivered by the authority of this section may be ordered or purchased by telephonic, electronic, mobile, or web-based wine ordering when the purchaser is verified to be 21 years of age or older, and must be delivered by an officer or employee of the wine specialty shop licensee who is 21 years of age or older. If the person receiving the delivery is not the purchaser, the licensee must verify that the person receiving the wine is 21 years of age or older and not noticeably intoxicated prior to completing the delivery. Nonlicensed third parties may not deliver wine with a gift basket on behalf of a licensed wine specialty

WV Legislature

shop.

(e) Any vehicle delivering wine in a gift basket shall meet the permit requirements set forth in this chapter.

(f) The commissioner may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code to effectuate the purposes of this section.

WV Legislature

§60-8-6c. Winery and farm winery license to sell wine growlers and provide samples prior to purchasing a wine growler.

(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 wine 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 winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) Sales of wine. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off-premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish its wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of samples as permitted in subsection (c) of this section, for on-premises sales in accordance with §60-4-3b of this code, or for on-premises sales when separately licensed as a private wine restaurant or a private manufacturer club.

(c) Samples. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer samples of wine as set forth in §60-4-3b of this code.

(d) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) Payment of taxes and fees. — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) Advertising. — A licensed winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) Wine Growler defined. — For purposes of this section and section §60-8-6d of the code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other

WV Legislature

material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine 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. For purpose of this article, a secure seal 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 wine growler to form a seal that is broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) Wine Growler requirements. — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) Wine Growler labeling. — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) Wine Growler sanitation. — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) Fee. — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) Limitations on licensees. — To be authorized under this section, a licensed winery or farm

www.Legislature

winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) 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 this section.

WV Legislature

§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee's authority to sell wine 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 wine 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 wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine*. — A licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this section and meets the requirements of this section may offer wine for retail sale to patrons from the licensed premises in a sealed wine growler for personal consumption off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The nonprorated, nonrefundable annual fee to sell wine growlers is $100.

(c) *Retail sales.* — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting sales of wine in a wine growler and is subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes and fees*. — A licensee authorized under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising*. — A licensee authorized under this section may advertise a particular brand or brands of wine and the price of the wine, subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Wine Growler defined and requirements*. — A licensee authorized under this section shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

(g) *Wine Growler labeling and sanitation*. — A licensee authorized under this section shall label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

WV Legislature

(h) *Complimentary samples*. — A licensee authorized under this section may provide complimentary wine growler samples to a person intending to purchase a wine growler which may be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary wine samples shall, prior to providing any samples, verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or noticeably intoxicated.

(i) *Limitations on licensees*. — A licensee under this section may only sell wine growlers during the hours of operation set forth in this article. Any licensee licensed under this section shall maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only be accessible by the licensee. Any licensee licensed under this section is subject to the applicable penalties under this article for violations.

(j) *Non-applicability of certain statutes*. — Notwithstanding any other provision of this article to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a wine growler or providing complimentary wine samples as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the licensee's licensed premises is subject to penalties under this article.

(k) *Rules*. — The commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this section.

WV Legislature

§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must 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 wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is $200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements*. —

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party 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 article for the sale of wine.

(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 manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per

WV Legislature

delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person may be no greater than $20 per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f 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) *Private Wine Delivery Requirements*. —

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per 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) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

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

WV Legislature

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine 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 shall 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 wine delivery which is subject to age verification upon delivery with the delivery person's visual review and 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, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit*. —

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery 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 wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement*. —

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and

WV Legislature

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 wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is 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.

WV Legislature

§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is $200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements*. —

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must 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 article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

WV Legislature

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

(e) *Private Wine Delivery Requirements*. —

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by 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) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine 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. —

WVLegislature

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and 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, must 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 third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit*. —

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery 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 wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement*. —

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents 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.

WV Legislature

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is 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.

WV Legislature

§60-8-6g. Special privilege of Class A private wine restaurant licensee to operate separate, but connected, Class B wine specialty shop license.

A Class A private wine restaurant licensee may, in the commissioner's discretion, operate Class B wine specialty shop license for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the Class A private wine restaurant is licensed premises: *Provided*, That each business is licensed separately and operates separate cash registers and maintains separation barriers between the different licensed operations. A licensee who fails to license two inner-connected businesses subjects the licensee to the penalties under this article.

WV Legislature

§60-8-7. Records; inspection.

Every person who sells or ships wine as a direct shipper to West Virginia adult residents or who sells or ships wine to a distributor, and every distributor shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading and other pertinent papers required by the commissioner. All such records shall be preserved for at least two years. The Tax Commissioner or the commissioner, or both, may inspect the books, accounts and records of any licensee and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor. The Tax Commissioner or the commissioner, or both, may require the production, within this state at the time and place the Tax Commissioner or the commissioner, or both, may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the Tax Commissioner, the commissioner or their duly designated agents.

WV Legislature

§60-8-8. Authorizing wineries and farm wineries to sell and serve wine at fairs and festivals.

All wineries and farm wineries also possessing a Class A wine license or private manufacturer club license may serve and sell wine as set forth in §60-4-3b and §60-8-3 of this code at any licensed fair or festival in the state of West Virginia, subject to the fair or festival licensee granting the winery or farm winery permission to do so in writing.

WV Legislature

§60-8-9.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-8-10.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-8-11.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-8-12.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-8-13.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-8-14.

Repealed.

Acts, 1983 Reg. Sess., Ch. 9.

WV Legislature

§60-8-15.

Repealed.

Acts, 1991 Reg. Sess., Ch. 118.

WV Legislature

§60-8-16. Application for license.

(a) Any person desiring a license under this article shall file a written application for a license with the commissioner and in the application shall state under oath:

(1) The name of the applicant, including his or her trade name if any, his or her residence address and the length of his or her residence;

(2) The address of the place of business for which the license is desired, or other description that definitely locates it; and that the place of business conforms to all health and fire laws and regulations applicable thereto;

(3) The name of the owner of the premises upon which the business is to be conducted and, if the owner is not the applicant, that the applicant is the bona fide lessee of the business;

(4) If the application is for a retailer's license, that the applicant is the proprietor or owner of a bona fide grocery store, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop;

(5) That the applicant intends to carry on the business authorized by the license for himself or herself or under his or her immediate supervision or direction;

(6) That the applicant is a citizen of the United States;

(7) That the applicant shall include a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of an applicant for licensure set forth in this section, 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, 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 must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(8) That the applicant is not less than 21 years of age;

(9) That the applicant has not been convicted of a felony or other crime involving moral turpitude within the three years next preceding the filing of the application; and that he or she has not, within the two years next preceding the filing of the application, been convicted of violating the liquor laws of any state or of the United States;

(10) That the applicant has not during the five years next preceding the date of said application had any license revoked under this chapter or under the liquor laws of any other

WV Legislature

state;

(11) If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall state the matters required in subdivisions (6), (8), (9), and (10) of this subsection, with respect to each of the members and the manager thereof, and each of said members and the manager must meet all the requirements in said subdivisions;

(12) If the applicant is a corporation, organized or authorized to do business in this state, the application shall state the matters required in subdivisions (6), (8), (9), and (10) of this subsection, with respect to the manager and each of the officers and directors thereof, and any stockholder owning 20 percent or more of the stock of the corporation and any other persons who conduct and manage the licensed premises for the corporation. Each of said individuals must meet all the requirements provided in those subdivisions except that the requirements as to citizenship may not apply to the officers, directors, and stockholders of a corporation applying for a retailer's license; and

(13) If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust must state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date.

(14) Any other information that the commissioner may reasonably require of the applicant, or licensee, or the applicant or licensee's manager.

The foregoing statements required in an application are mandatory prerequisites for the issuance of a license.

The application must be verified by the owner, manager, or in the case of a firm, partnership, limited partnership, limited liability company, association, or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license. The application of a corporation applying for a retailer's license need be verified only by its president or vice president.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the

activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq*. of this code.

WV Legislature

§60-8-17. License issuance or refusal; terms of license.

(a) Upon receipt of the completed application, fee, and bond if required, the commissioner shall conduct any investigation he or she considers necessary to determine the accuracy of the matters contained in the completed application for the applicant or manager. For the purposes of conducting such investigation, the commissioner may withhold the granting or refusal to grant a license for a period not to exceed 30 days or until the applicant has completed the conditions set forth in §60-8-16 of this code. If it appears that the applicant, and the manager in the application or a licensee and manager in the renewal application, subject to investigation set forth in this section, is a suitable person, is located at a suitable premise, there is no false statement, no material misrepresentations, no hidden ownership, no persons with an undisclosed pecuniary interest contained in the application, and that the issuance of the license would not be in conflict with any of the provisions of this chapter, the commissioner shall issue the license. Otherwise the commissioner shall refuse to issue the license.

(b) The commissioner shall refuse the license of any applicant if he or she finds that any such applicant or manager is not a suitable person, that the place of business of the applicant is not a suitable place, or that the applicant has not complied with the provisions of this chapter. Upon refusal to issue the license, the commissioner shall enter an order refusing such application. The refusal is final unless a hearing is requested in accordance with the provisions of §60-8-18 of this code. When the refusal becomes final the commissioner shall immediately refund to the applicant his or her fees and bond accompanying the application.

(c) The license expires on June 30 next following the date it was issued and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fee and filing of any bond required by this article.

(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 licensee must pay the applicable full-year annual license fee and the reactivation fee prior to the processing of any renewal application. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §11-16-23 of this code, as determined by the commissioner.

(e) The license may not be transferred to another person, but the location of the premises to which the license relates may be changed with the written consent of the commissioner, if the new location satisfies the requirements of this article upon an initial application and payment of a new application fee.

WV Legislature

§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the commissioner upon the licensee; 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 on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule promulgated or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth in this section.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee's license;

(B) Suspend the licensee's license for a period determined by the commissioner not to exceed 12 months;

(C) Place the licensee on probation for a period not to exceed 12 months; or

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

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a hearing shall give security for the cost of the hearing in a form and amount required by the commissioner. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections (f) and (g) of this section, then the costs of the hearing shall be assessed against

WV Legislature

him or her by the commissioner and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing, the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review.

(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right to judicial review of the order code in 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, the review shall be conducted in the manner provided in Chapter 29A of this code. The applicant or licensee shall file the petition for the review with the circuit court within 30 days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying, and transmitting the records pertaining to the matter to circuit court.

(g) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

(h) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

WV Legislature

§60-8-19. To whom licensed manufacturer may sell.

A licensed manufacturer who is licensed as a supplier of wine, as defined in this article, may sell such wines in this state only to the commissioner and to distributors as defined in this article. Such manufacturers may sell such wine outside of this state for use or resale outside this state. The provisions of this section shall not apply to farm wineries as defined by section five-a, article one of this chapter.

WV Legislature

§60-8-20. Unlawful acts generally.

It is unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of §60-8-6 of this code or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in §60-1-5a of this code;

(b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than 21 years of age, or to a mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided*, That the provisions of section §60-3A-25a of this code shall apply to sales of wine;

(d) For a licensee to permit a person who is less than 18 years of age to sell, furnish or give wine to any person, except as provided for in subsection (g) of this section;

(e) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: *Provided*, That no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed in this state: *Provided*, however, That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale, of which brand or brands the other distributor has been authorized by a licensed supplier to distribute. The commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;

(f) For a person to violate any rule promulgated by the commissioner under this article;

(g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in any licensee's lawful employment, including the sale of wine or distribution of wine on behalf of a winery, farm winery, farm entity, supplier, or distributor under the provisions of this article. With the prior approval of the commissioner, a licensee may employ persons who are less than 18 years of age but at least 16 years of age: *Provided*, That the person's duties may include the sale of nonintoxicating beer or wine only when

WV Legislature

directly supervised by a person 21 years of age or older: *Provided, however,* That the authorization to employ persons under 18 years of age shall be clearly indicated on the licensee's license: *Provided, further,* That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this article.

WV Legislature

§60-8-20a. Unlawful acts by persons.

(a) Any person under the age of twenty-one years who purchases, consumes, sells, possesses or serves wine or other alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed $500 or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor 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 wine or other 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 wine or other alcoholic liquors, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed $50 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 shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one to whom they are not related by blood or marriage, is guilty of a misdemeanor and, shall, upon conviction thereof, be fined in an amount not to exceed $100 or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

WV Legislature

§60-8-21. Sale in sealed, labeled packages required.

All wines sold pursuant to this article, except that sold pursuant to the provisions by article seven of this chapter, shall be sold only in sealed packages, bearing such seals and labels as the commissioner may require. A manufacturer of wine offered for sale by any licensee shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commissioner may require.

WV Legislature

§60-8-22. Sales on credit prohibited; exception.

It shall be unlawful for a distributor to sell or offer to sell, or a retailer to purchase or receive, any wine except on a cash basis and no right of action exists to collect any claims for credit extended contrary to the provisions of this subdivision: Provided, That nothing herein prohibits, as a credit on any subsequent sale, the crediting of the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipments or orders and other such reasons customary in the trade: Provided, however, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the wine. The cost of the electronic fund transfer must be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery.

WV Legislature

§60-8-23. Duties and powers of commissioner; rules.

(a) The commissioner is authorized:

(1) To enforce the provisions of this article.

(2) To enter the premises of any licensee at reasonable times for the purpose of inspecting the premises and determining the compliance of the licensee with the provisions of this article and any rules promulgated by the commissioner.

(3) In addition to rules relating to the tax imposed by §60-8-4 of this code or otherwise authorized by this article, to promulgate reasonable rules as he or she deems necessary for the execution and enforcement of the provisions of this article, which may include, but shall not be limited to:

(A) The transport, use, handling, service and sale of wine;

(B) Establishing standards of identity, quality and purity to protect the public against wine containing deleterious, harmful or impure substances or elements and against spurious or imitation wines and wines unfit for human consumption; and

(C) Restricting the content of wine advertising so as to prohibit false or misleading claims, or depictions or descriptions of wine being consumed irresponsibly or immoderately, or advertising presentations designed to appeal to persons below the legal drinking age: *Provided,* That the commissioner shall not promulgate any rule which prohibits the advertising of a particular brand or brands of wine and the price thereof, or which prohibits or restricts the advertising medium used: *Provided, however,* That price shall not be advertised in a medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

(4) To issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of §60-8-12 of this code, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in §29A-5-1 of this code with like effect as if said section was set forth in extenso in this subdivision.

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

(c) Except as may be in this article to the contrary, the commissioner shall not have authority by rule or otherwise to regulate markups, prices, discounts, allowances or other terms of sale at which wine may be purchased or sold by wine distributors or licensees authorized to sell wine at retail but nothing herein shall be deemed to authorize or permit any discriminatory practice prohibited by §60-8-31(a), of this code or any other discriminatory practice.

WV Legislature

(d) All rules promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provisions of chapter 29A of this code. The rules promulgated pursuant to the prior enactment of this article and not disapproved by the Legislature shall remain in full force and effect to the extent that such rules are not abrogated and made null and void by the reenactment of the sections of this article during the regular session of the Legislature for 1986. Any rule which is inconsistent or contrary in any way to any provision of this article now or hereafter enacted are null and void.

WV Legislature

§60-8-24. Disposition of revenue.

(a) The first $200,000 of fees collected under the provisions of this article during each fiscal year shall be deposited into a special revolving fund designated the Tax Commissioner's Wine Tax Administration Fund, which fund is hereby created in the State Treasury. The Tax Commissioner's Wine Tax Administration Fund shall be used by the Tax Commissioner to administer and support direct and indirect costs of the Tax Division for administration, collection, including compliance enforcement, auditing and distribution of taxes on wine imposed by this code and for which the Tax Commissioner has administration, collection, compliance enforcement, auditing or distribution functions or responsibilities.

(b) After collection and deposit of the first $200,000, as specified in subsection (a) of this section, all fees collected by the Alcohol Beverage Control Commissioner under the provisions of this article shall next be deposited in the State Treasury and credited to a special fund to be known as the Wine License Special Fund. All moneys in the Wine License Special Fund may be expended only by the Alcohol Beverage Control Commissioner for the administration of the provisions of this article or, to the extent of any excess, for the administration of this chapter or as may be appropriate by law.

(c) The liter tax imposed and collected by the Tax Commissioner under the provisions of this article shall be paid into the State Treasury and deposited in the General Revenue Fund of the state.

(d) All moneys collected by the Alcohol Beverage Control Commissioner and the Tax Commissioner under the provisions of this article shall be remitted to the State Treasury monthly within fifteen days after the end of each month.

WV Legislature

§60-8-25. Criminal penalties; public nuisances.

(a) Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts herein declared to be unlawful, is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $100 nor more than $1,000, or imprisoned in the county jail not less than thirty days nor more than six months, or both fined and imprisoned. Magistrate courts shall have concurrent jurisdiction with the circuit court for the trial of all misdemeanors arising under this article.

(b) The provisions of sections sixteen and seventeen, article six of this chapter shall apply to persons violating the provisions of this article to the same extent as if such provisions were set forth in extenso herein.

WV Legislature

§60-8-26. Forfeiture of bond.

On conviction of a violation of any provision of this article, upon the revocation of a license in accordance with section eighteen of this article or upon finding of failure of a taxpayer to pay all taxes prescribed by section four of this article, which conviction, revocation or finding has become final, the licensee, former licensee or company registered and licensed as a supplier or distributor, as the case may be, shall forfeit any bond required by section twenty-nine of this article. The penal sum of any bond forfeited shall forthwith be paid to the state Treasurer and credited to the General Revenue Fund of this state. Such sum may be collected by an action at law or other appropriate remedy.

WV Legislature

§60-8-27. Local option elections.

The question "Shall the sale of alcoholic beverages under the West Virginia liquor control commission be permitted in ....."? stated in the petition and ballot under the provisions of sections three and five, article five of this chapter shall be deemed to include therein the sale of wine under the provisions of this article. Within thirty days after a "local option election" conducted under the provisions of article five of this chapter in which a majority has voted "No," the commission shall close all state stores and discontinue all agencies within the county or municipality as provided in section seven, article five of this chapter, and each retailer shall cease the sale of wine.

WV Legislature

PART III. WINE DISTRIBUTION.

§60-8-28. Wine brand licensing and registration and review of wine labels.

Every supplier offering wine for sale under this article shall register with the commissioner each wine brand offered for sale in the state and shall pay a fee of $100 for the registration of such wine brand for three years, such fee shall be returned to the supplier if the wine is not registered for sale. No wine brand may be sold under this article unless all of such wine brand's labels intended for sale in the state have been registered and reviewed by the commissioner. Every supplier offering various wine labels of a registered and reviewed wine brand for sale in the state shall submit all of the wine brand's labels intended for sale in the state for registration prior to the sale of such wine labels in the state for no additional fees. After the expiration of three years, the supplier may renew the registered wine brand by paying a $100 renewal fee for three more years and every three years thereafter. Prior to registration of any wine labels, the commissioner shall review the wine labels. This review shall include, but not be limited to, a review of the alcohol content, corporate or product information, marketing and advertising so that the wine label is not intended to be marketed to persons less than twenty-one years of age. The commissioner shall remove all nonrenewed wine labels and any licensee who sells wine with nonrenewed wine labels shall be subject to the penalties under section eighteen of this article. Failure to register, obtain certification and pay the annual fee for a wine brand and failure to register the wine brand's labels will subject the supplier to penalties under said section.

WV Legislature

§60-8-29. Affidavit of compliance required of distributors and suppliers.

Each applicant for a distributor's license or a supplier's license shall furnish at the time of application an affidavit of compliance with federal and state laws regarding tied house laws, trade practice requirements, and furnishing things of value requirements set forth in the code and the rules. The commissioner shall suspend the licenses of licensed distributors and suppliers upon 10 days written notice by the commissioner, for failing to pay their taxes to the Tax Commissioner or who are not otherwise in good standing with the commissioner and other state agencies. If the licensed distributors and suppliers fail to pay their taxes or otherwise fail to take corrective actions to put the licensed distributors and suppliers in good standing within 30 days from the date of suspension of the licensee's license, then the commissioner shall revoke the licensee's license pursuant to the requirements of this article.

WV Legislature

§60-8-30. Exclusive franchise agreements prohibited.

It shall be illegal for any manufacturer, winery, farm winery or supplier to enter into any exclusive franchise agreement with any distributor whereby any such distributor is given the exclusive right within this state or in any given territory within this state to distribute the product or products of such manufacturer which are to be sold or distributed pursuant to the provisions of this article. Further, all agreements between a manufacturer, winery, farm winery or supplier and a distributor must be in writing and on file with the commissioner and all such agreements must provide for termination of either party provided that notice of termination is provided in writing and by certified mail to the commissioner and all parties to the agreement ninety days prior to the termination date. Once the notice has been received by either party, the distributor shall: (1) Use the ninety-day period to deplete such distributor's affected wine inventory; or (2) reach some agreement with the manufacturer, winery, farm winery or supplier to return unused salable wine inventory or receive payment for unused salable wine inventory. No new distributor shall be appointed until the conclusion of the ninety days or as the parties have otherwise agreed to complete the termination. For the purposes of this article, "salable" shall mean inventory fit for human consumption or as otherwise determined by the commissioner.

WV Legislature

§60-8-31. Other unlawful acts.

It is unlawful:

(a) For a distributor to discriminate in price, sales agreements, terms or services offered to retailers, licensees or to any licensee under article seven of this chapter and further it is unlawful for a supplier to discriminate against a distributor in price, sales agreements, terms or services. "Discriminate", as used in this section, means the granting of more favorable prices, agreements, terms or services to one person than to another.

(b) For a distributor, his or her agents, servants or employees to transport or deliver wine to any retail licensee or to any licensee under article seven of this chapter on Sunday or any general election day.

(c) For a distributor to sell wines authorized by this article to licensees under article seven of this chapter at a price which is greater than the price at which such wines are sold and distributed to retailers under this article.

WV Legislature

PART IV. WINE RETAILERS.

§60-8-32. Where wine may be sold at retail.

Except as to sales permitted to be made by wineries or farm wineries that obtain a retailer's license, private wine bed and breakfasts, private wine restaurants and private wine spas, wine sold pursuant to this article may be sold at retail only by the commissioner and in and by retailers and wine specialty shops as defined by section two of this article.

WV Legislature

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

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

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

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

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

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

(2) Open to the air; and

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

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

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

WV Legislature

21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

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

WV Legislature

§60-8-33. Certain prohibitions not applicable.

The prohibitions contained in subdivisions (h) and (j), section thirteen, article sixteen, chapter eleven of this code and the prohibitions contained in subdivisions (1), (2) and (3), section seven, article six of this chapter shall not apply to the holder of a retailer's license issued under the provisions of this article: Provided, That all prohibitions contained within this article shall apply to the holder of a retailer's license notwithstanding the provisions of this section.

WV Legislature

§60-8-34. When retail sales prohibited.

It is unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and 6:00 a.m. or, it is unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, or between the hours of 2:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays.

WV Legislature

§60-8-35. Other unlawful acts.

No person while on the premises of any retailer licensed pursuant to this article shall:

(1) Break the seal on any package or bottle of wine;

(2) Consume alcoholic liquor, wine or beer; or

(3) Loiter.

WV Legislature

§60-8A-1. Definition of Hard Cider.

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

WV Legislature

§60-8A-2. Applicability of other laws and licenses.

(a) Except as stated in this article, all wine licenses and other wine requirements set forth in §60-8-1 *et seq*., §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution, or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(b) Except as stated in this article, all hard cider distributors are bound by all wine distribution requirements set forth in §60-8-1 *et seq*., §60-4-3b, and §60-6-2, of this code which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider.

WV Legislature

§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns; application of state tax law; rulemaking authority.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, a tax of 22.6 cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider are eligible for the credits in this state against the tax on hard cider. In the case of a person who produces not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine gallons of hard cider which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of this section, the term "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the hard cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-12 of this code.

(c) Before the 16th day of each month thereafter, every winery, farm winery, supplier, distributor, and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label, and alcoholic content of hard cider sold by the winery, farm winery, and supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the hard cider sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq*. of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month subjects a winery, farm winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

WV Legislature

(d) No hard cider imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

(e) *Administrative procedures*. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq*. of this code, applies to the taxes imposed pursuant to this section, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this section and were set forth in extenso in this article.

(f) *Criminal penalties*. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 *et seq*. of this code applies to the taxes imposed pursuant to this section with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

(g) The Tax Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this section.

WV Legislature

§60-8A-4. Fruit sources; phase in; applications.

(a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may apply to the Agriculture Commissioner with a copy to the commissioner showing its inability to obtain 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider from within this state. The Agriculture Commissioner may issue a permit to the applicant to import such fruit, honey, or fruit juice concentrate in an amount determined necessary by the Agriculture Commissioner to allow the farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof is on the applicant to show that apples, pears, peaches, honey, or other fruits, of the type normally used by the licensee are not available from any other source within the State of West Virginia. The commissioner shall not consider an application for a permit under this section unless it is accompanied by written findings by the Agriculture Commissioner in support of the application.

(c) Notwithstanding any provision in §60-3-25 of this code, to the contrary, any permit issued under this section is effective for a period of up to three years: *Provided*, That the applicant files an annual statement of necessity, supported by written findings from the Agriculture Commissioner, with the commissioner. After the five-year permit issued pursuant to this section has expired, the applicant shall submit any subsequent application for a permit pursuant to §60-3-25 of this code.

WV Legislature

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide samples; growler sales; advertisements; taxes; fees; rulemaking.

(a) Sales of hard cider. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption off-premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g) of this code. Customers may consume hard cider on-premises when an operator of a winery or farm winery is licensed as a private wine restaurant or a private manufacturer club.

(b) Samples. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The samples may be no greater than three fluid ounces per sample per patron, and a sampling shall not exceed six complimentary three fluid ounce samples per patron per day. A licensed winery or farm winery providing samples shall provide food, which may be pre-packaged food not requiring kitchen preparation, items to the patron consuming the samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated. The winery or farm winery is subject to the hours of operation set forth in §60-8-34 of this code.

(c) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties. A winery or a farm winery holding a private wine restaurant license or private manufacturer club license may offer for sale and service hard cider by the drink or glass or cider by the bottle when consumed by the glass on the property of the winery or farm winery. In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of the winery or farm winery's sealed hard cider. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized winery or farm winery may conduct on-premises and off-premises consumption sales of their hard cider from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales of hard cider shall comply with all retail requirements in §60-8-1

WV Legislature

et seq. of this code and §60-8A-1 *et seq*. of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide, sell, and serve hard cider samples in the amounts set forth in subsection(b) of this section, hard cider by the glass or drink, or hard cider by the bottle when consumed by the glass of its hard cider for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated.

(d) Payment of taxes and fees. — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) Advertising. — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) Growler requirements. — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license fee is $50.

WV Legislature

§60-8A-6. Rule-making authorization.

The West Virginia Alcoholic Beverage Control Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this article.

WV Legislature

§60-9-1. Definitions.

(a) As used in this article:

(1) "Package" means a pack, carton or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed, or intended for distribution, to consumers.

(2) "Importer" means "importer" as that term is defined in 26 U.S.C. 5702(1).

(3) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator, and when used in connection with any penalties imposed by this article, means and includes officers, directors, trustees or members of any firm, copartnership, association, corporation, trust or any other unit acting as a group.

(4) "Retailer" means and includes every person in this state, other than a wholesaler or subjobber, as defined in section two, article seventeen, chapter eleven of this code, engaged in the selling of cigarettes at retail to a consumer or to any person for any purpose other than resale.

WV Legislature

§60-9-2. Cigarettes produced for export -- prohibitions.

(a) It is unlawful for any person:

(1) To sell or distribute to consumers in this state, to acquire, hold, own, possess or transport, for sale or distribution in this state, or to import, or cause to be imported, into this state for sale or distribution in this state:

(A) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "for export only," "U.S. tax-exempt," "for use outside U.S." or similar wording; or

(ii) Does not comply with:

(I) All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution, or use in the United States, including, but not limited to, the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(II) All federal trademark and copyright laws;

(B) Any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law or the implementing federal regulations;

(C) Any cigarettes that the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(D) Any cigarettes for which there has not been submitted to the secretary of the United States department of health and human services, the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1355a;

(2) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(A) Any statement, label, stamp, sticker or notice described in subparagraph (i), paragraph (A), subdivision (1), subsection (a) of this section; or

(B) Any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; or

(3) To affix any stamp required pursuant to article seventeen, chapter eleven of this code to the package of any cigarettes described in subdivision (1), subsection (a) of this section or

WV Legislature

altered in violation of subdivision (2), subsection (a) of this section.

WV Legislature

§60-9-3.

Repealed.

Acts, 2013 Reg. Sess., Ch. 60.

WV Legislature

§60-9-4. Criminal penalties.

Any person that commits any of the acts prohibited by section two of this article, either knowing or having reason to know he or she is doing so is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in a state correctional facility not more than five years, or both fined and imprisoned.

WV Legislature

§60-9-5. Administrative sanctions.

(a) The State Tax Commissioner may revoke or suspend the authorization to affix the tax stamp of any person for a violation of this article or any legislative rule related to this article that is promulgated by the commissioner pursuant to chapter twenty-nine-a of this code and, in conjunction, the Alcohol Beverage Control Commissioner may impose on the person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or $5,000, upon finding a violation by such person of this enactment, or the rules promulgated by the commissioner.

(b) Cigarettes that are acquired, held, owned, possessed, transported in, imported into or sold or distributed in this state in violation of this article are considered contraband under article seventeen, chapter eleven of this code and are subject to seizure and forfeiture as provided therein. Such cigarettes are considered contraband whether the violation of this article is knowing or otherwise.

(c) The State Tax Commissioner may assess tax due, penalty, and interest on any product acquired, possessed, sold, or offered for sale in violation of this article.

(d) Any monetary penalty assessed and collected by the Alcohol Beverage Control Commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of "the alcohol beverage control enforcement fund," established pursuant to section thirteen, article seven, chapter sixty of this code. 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 this article and rules pertaining to cigarettes and shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state.

(e) Any person aggrieved by the imposition of a civil penalty pursuant to this article may request a hearing, within ten days of receipt of the notice imposing penalties, before the Alcohol Beverage Control Commissioner in the manner set forth herein. The commissioner may not hold a hearing or impose any civil penalties until after at least ten days' notice to the person of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such penalty, and which shall be served upon the person as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested; at which time and place, so designated in the notice, the person has the right to appear and produce evidence in his or her behalf, and to be represented by counsel.

The commissioner may summon witnesses in the hearing before him or her, and fees of witnesses summoned on behalf of the state in proceedings 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 sum, not to exceed $200 per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the

WV Legislature

hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund.

The action of the commissioner imposing a civil penalty is subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code. Petition for such review must be filed with the circuit court within a period of thirty days from and after the date final imposition of the civil penalty following hearing, if any, and any person obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such 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 any matter shall be made within thirty days from and after the entry of the final order. All hearings before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in the notice, or agreed upon between the person and the commissioner; and when the hearing is held elsewhere than in the commissioner's office, the person may be required to make deposits of the estimated costs of such hearing.

WV Legislature

§60-9-6. Unfair trade practices.

A violation of section two of this article constitutes an unlawful trade practice as provided in article eleven-a, chapter forty-seven of this code and, in addition to any remedies or penalties set forth in this article, is subject to any remedies or penalties for a violation of that article.

The Alcohol Beverage Control Commissioner shall enforce each and every provision of the Unfair Trade Practices Act in article eleven-a, chapter forty-seven of this code with respect to packages of cigarettes with like effect as if that article were set forth in extenso herein.

WV Legislature

§60-9-7. Unfair cigarette sales.

For purposes of this article, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

WV Legislature

§60-9-8. General enforcement provisions.

(a) This article shall be enforced by the State Tax Commissioner and the Alcohol Beverage Control Commissioner and for the purpose of enforcing this article, the commissioners may request information from any state agency, Constitutional officer or local agency and, notwithstanding the provisions of section five-d, article ten, chapter eleven of this code or any other provision of this code, may share information with, and request information from, any federal agency and any agency or Constitutional officer of this or any other state or any local agency thereof.

(b) A person that acquires, holds, owns, possesses, transports in or imports into this state cigarettes that are subject to this article shall, with respect to the cigarettes, maintain and keep all records required pursuant to article seventeen, chapter eleven of this code.

(c) In addition to any other remedy provided by law, any person may bring an action for appropriate injunctive or other equitable relief for a violation of this article; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of complaint, taxable costs, and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the actual damages sustained by reason of the violation.

WV Legislature

§60-9-9. Applicability.

This article does not apply to cigarettes allowed to be imported or brought into the United States for personal use, and cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations: Provided, That this article does apply to any cigarettes that are brought back into the customs territory for resale within the customs territory. The penalties provided in this article are in addition to any other penalties imposed under other law.

WV Legislature

§60-10-1. Enforcement authority; jurisdiction.

The commissioner is hereby authorized to enforce the provisions of §19-12E-1 *et seq*. of this code and §19-12F-1 *et seq*. of this code, as relating to retail sales.

WV Legislature

§60-10-2. General provisions.

For the purposes of enforcing §19-12E-1 *et seq*. and §19-12F-1 *et seq*. of this code, the Alcohol Beverage Control Commission and the Commissioner of Agriculture may request information from any state agency, Constitutional officer, or local agency and, notwithstanding the provisions of §11-10-5d of this code or any other provision of this code, may share information with, and request information from, any federal agency and any agency or Constitutional officer of this or of any other state or any local agency thereof.

WV Legislature