

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 534

BY SENATORS TRUMP, TAKUBO, AND MARONEY

[Passed March 11, 2023; in effect 90 days from
passage (June 9, 2023)]

FILED

2023 MAR 29 P 5:26

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SECRETARY OF STATE

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, designated §8-12-26 and §8-12-27; to amend and reenact §11-16-3, §11-16-6,
3 §11-16-6a, §11-16-6d, §11-16-6f, §11-16-8, §11-16-9 of said code; to amend and reenact
4 §60-3A-3a, and §60-3A-8 of said code; to amend and reenact §60-4-3a and §60-4-3b of
5 said code; to amend and reenact §60-7-2, §60-7-2a, §60-7-6, and §60-7-8a of said code;
6 to amend said code by adding thereto a new section designated §60-7-8g; to amend said
7 code by adding thereto a new section, designated §60-8-6g; to amend and reenact §60-
8 8A-5 of said code; and to amend and reenact §61-8-27 of said code; all relating to
9 nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor license
10 requirements; defining terms; authorizing municipalities to create private outdoor
11 designated areas by ordinances; creating special permit for Class A licensees who apply
12 to be qualified permit holders to operate in private outdoor designated areas, setting forth
13 requirements, and setting fees; providing municipalities may not impose additional license
14 fees on any state licensee; promoting tourism in the state by permitting authorized
15 brewers, resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-
16 distilleries a limited off-site retail privilege for off-premises consumption sales for
17 nonintoxicating beer manufactured by them and permitting limited complimentary samples
18 at private fair and festivals; providing requirements for the conduct of the sales at private
19 fairs and festivals; requiring payment of taxes, fees and markups, and no license fee;
20 clarifying the nonintoxicating beer growler requirements for contents and sealing; allowing
21 brewer and resident brewer to have additional places of manufacture under one license
22 and based on manufacturing volume capacity; reducing fees and limiting additional places
23 of manufacture under one license; forbidding the commissioner from considering licenses
24 in other state as a criterion when evaluating applications for licensure in this state;
25 providing that any applicant for licensure in this state must meet all requirements, must be
26 in good standing in all other states and must never had a license revoked in any other

27 state in which it is licensed; providing, that persons licensed as resident brewers in this
28 state are limited to producing 25,000 barrels of non-intoxicating beer and limited to self-
29 distribution rights of 10,000 barrels of non-intoxicating beer; providing that such production
30 and distribution limits shall apply, in the aggregate, whether produced in another state or
31 West Virginia, as to all non-intoxicating beer produced by a person licensed as a resident
32 brewer in West Virginia; providing a licensed brewer or resident brewer may enter into
33 contract brewing services agreements with another licensed brewer or resident brewer
34 with its principal place of business and manufacture located in the State of West Virginia
35 for purposes of sharing brewing equipment or facilities as part of the manufacture of
36 nonintoxicating beer or nonintoxicating craft beer; requiring any such contract brewing
37 services agreement shall be provided to the West Virginia Alcohol Beverage and Control
38 Administration and contain enumerated terms and conditions: removing limit on
39 nonintoxicating beer or nonintoxicating craft beer which may be included with an order,
40 sale or delivery of multiple meals; allowing commissioner to refuse a license if applicant
41 or manager is not a suitable applicant; increasing number and size of liquor samples that
42 are permitted; requiring manager to be suitable applicant and of good moral character;
43 reducing and modifying food inventory required for private cigar shop, private club bars,
44 private food truck, private manufacturer club, private hotel, private resort hotel, private
45 farmers market in a private club restaurant, private multi-sport complex, and private food
46 court; allowing a private manufacturer club to have operating food truck or other portable
47 kitchen in lieu of on-premises food preparation facilities; removing acreage requirement
48 for private wedding venue or barn license; clarifying nonintoxicating beer license
49 requirements for persons, fairs and festivals; clarifying retail liquor outlet license
50 requirements for applicants; clarifying that the statute applying to distilleries and mini-
51 distilleries also applies to micro-distilleries; clarifying manufacturing limitations on
52 distilleries, mini-distilleries, and micro distilleries; permitting dually licensed events, and a

53 license fee; creating a private coliseum or center license and specifying license
54 requirements; authorizing private coliseum or center license to conduct a temporary event
55 in conjunction with a private fair and festival licensee and setting forth requirements;
56 setting fees; creating a private food court license and specifying license requirements;
57 clarifying dual licensing requirements and authorization for private fair and festivals,
58 requirements, and no license fee; permitting private fairs and festivals to conduct on-
59 premises consumption sales with certain requirements; permitting private fairs and
60 festivals to allow authorized brewers, resident brewers, wineries, farm wineries, distilleries,
61 mini-distilleries, and micro-distilleries to conduct limited off-premises consumption retail
62 sales with certain requirements from the private fair and festival's licensed premises;
63 permitting a private wine restaurant to operate a separately licensed but connected wine
64 specialty shop; clarifying unlawful admission to dance hall; and exempting permit holder
65 operating a private outdoor designated area, private coliseum or center licensee, or private
66 food court from prohibition on admitting persons under the age of 18.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-26. Authorizing municipalities to create private outdoor designated areas.

1 (a) In addition to all other powers and duties conferred by law upon municipalities,
2 municipalities are empowered and authorized pass an ordinance establishing private outdoor
3 designated areas as described in §60-7-8g of this code.

4 (b) The municipality shall include in the ordinance, at a minimum, all of the following:

5 (1) Requirements for the purpose of ensuring compliance with all state and municipal laws,
6 and public health and safety within a private outdoor designated area;

7 (2) The proposed outdoor designated area or proposed licensed premises shall be
8 indicated on a submitted map or survey in sufficient detail to identify the boundaries of the area,
9 subject to the limitations in subsection (b) of this section;

10 (3) A general statement of the nature and types of qualified permit holders that may
11 operate within the proposed outdoor designated area;

12 (4) That certain public property that is legally demarcated by the ordinance is within the
13 proposed private outdoor designated area and such area is in compliance with the comprehensive
14 plan or zoning ordinances of the municipality, if the municipality has so adopted, for the
15 consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer;

16 (5) The specific boundaries of the private outdoor designated area, including street
17 addresses;

18 (6) The number, spacing, and type of signage designating the private outdoor designated
19 area;

20 (7) The days and hours of operation for the private outdoor designated area which may
21 not be greater than, authorized by §11-16-1 *et seq.* and chapter 60 of this code, but may be less
22 than;

23 (8) The estimated number of personnel needed to ensure public safety and efficient
24 operations in the private outdoor designated area;

25 (9) A sanitation plan that will help maintain the appearance and public health of the private
26 outdoor designated area, including the number of restrooms and trash receptacles.

27 (10) A requirement that liquor, wine, nonintoxicating beer, and nonintoxicating craft beer
28 be served in non-glass containers, not greater than 18 fluid ounces, approved by the municipality
29 and the commissioner as set forth in §60-7-8g of this code; and

30 (11) Public health and safety measures, and requirements to meet compliance with current
31 health permitting and zoning requirements.

32 (c) The municipality shall provide to the commissioner notice of the approval of the private
33 outdoor designated area and identify the qualified permit holders that will be applying for permits
34 set forth in §60-7-8g of this code.

35 (d) The municipality shall be responsible for ensuring compliance with its ordinances and
36 compliance with all criminal laws associated with the operation of a private outdoor designated
37 area. The municipality shall provide the commissioner copies of all non-compliance and violations.
38 The commissioner shall ensure all qualified permit holders operate in accordance with
39 requirements set forth in §11-16-1 *et seq.* and chapter 60 of this code.

40 (e) The municipality shall have the authority to dissolve a private outdoor designated area
41 by ordinance and further may suspend a private outdoor designated area immediately when in
42 the interest of public safety.

§8-12-27. Prohibiting municipalities from imposing additional alcohol licensure fees.

1 Notwithstanding any provision of this code to the contrary, any person licensed under §11-
2 16-1 *et seq.* of this code, shall not be charged any additional alcohol licensure fee by a
3 municipality.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context clearly requires differently:

2 (1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed,
3 concocted, blended, bottled, or otherwise produced, imported, or transshipped by a brewer or
4 manufacturer, the labels of which have been registered and approved by the commissioner, that

5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid
6 franchise agreement or a valid amendment thereto.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing,
8 importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale
9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this
10 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or
11 nonintoxicating craft beer.

12 (3) "Brewpub" means a place of manufacture of nonintoxicating beer or nonintoxicating
13 craft beer owned by a resident brewer, subject to federal and state regulations and rules, a portion
14 of which premises is designated for retail sales of nonintoxicating beer or nonintoxicating craft
15 beer by the resident brewer owning the brewpub.

16 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a
17 freestanding liquor retail outlet, licensed pursuant to §60-1-1 *et seq.* of this code.

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a
19 mixed retail liquor outlet licensed pursuant to §60-1-1 *et seq.* of this code.

20 (6) "Commissioner" means the West Virginia Alcohol Beverage Control Administration
21 Commissioner.

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place
24 of business is within this state. For purposes of a distributor only, the term "person" means and
25 includes an individual, firm, trust, partnership, limited partnership, limited liability company,
26 association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
29 distributor license that are unlawful acts or violations of §11-16-1 *et seq.* of this code
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

31 (8) "Franchise agreement" means the written agreement between a brewer and a
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,
33 which has been approved by the commissioner. The franchise agreement binds the parties so
34 that a distributor, appointed by a brewer, may distribute all the brewer's nonintoxicating beer
35 products, brands, or family of brands imported and offered for sale in West Virginia, including, but
36 not limited to, existing brands, line extensions, and new brands all in the brewer's assigned
37 territory for the distributor. All brands and line extensions being imported or offered for sale in
38 West Virginia must be listed by the brewer in the franchise agreement or a written amendment to
39 the franchise agreement. A franchise agreement may be amended by mutual written agreement
40 of the parties as approved by the commissioner with identical terms and conditions for a brewer
41 and all its distributors. Any approved amendment to the franchise agreement becomes a part of
42 the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a
43 franchise agreement. A distributor terminated by a brewer as provided in this article and the
44 promulgated rules no longer has a valid franchise agreement. If a brewer has reached an
45 agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a
46 successor distributor who accedes to all the rights of the cancelled or terminated distributor.

47 (9) "Franchise distributor network" means the distributors who have entered into a binding
48 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating
49 beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may
50 only have one franchise distributor network: *Provided*, That a brewer that has acquired the
51 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale
52 from a selling brewer, as specified in §11-16-21(a)(2) of this code, shall continue to maintain and
53 be bound by the selling brewer's separate franchise distributor's network for any of its existing
54 brands, line extensions, and new brands.

55 (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine,
56 beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4
57 of this code.

58 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other
59 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and
60 must be capable of being securely sealed. The growler is used by an authorized licensee for
61 purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for
62 personal consumption not on a licensed premise and not for resale. The nonintoxicating beer or
63 nonintoxicating craft beer served and sold in a sealed growler may include ice or water mixed with
64 the nonintoxicating beer or nonintoxicating craft beer to create a frozen nonintoxicating beer or
65 nonintoxicating craft beer beverage. Any frozen nonintoxicating beer or nonintoxicating craft beer
66 beverage machine used for filling growlers shall be sanitized daily, shall be under the control of
67 the licensee in the secure area, and served to the patron by the licensee from the secure area.
68 Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not
69 an open container under federal, state, and local law. A growler with a broken seal is an open
70 container under federal, state, and local law unless it is located in an area of the motor vehicle
71 physically separated from the passenger compartment. The secure sealing of a growler requires
72 the use of a tamper-evident seal, security tape, or other material, as approved by the
73 commissioner, placed on or over the growler's opening, which seal, security tape or other material
74 is clearly marked with the date of the secure sealing by the authorized licensee who is selling the
75 growler.

76 (12) "Line extension" means any nonintoxicating beer product that is an extension of a
77 brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for
78 sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated,
79 or otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries,
80 parent entities, contracted entities, affiliated entities, or other related entities. In determining

81 whether a nonintoxicating beer product is a line extension, the commissioner may consider, but
82 is not limited to, the following factors: Name or partial name; trade name or partial trade name;
83 logos; copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

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

94 (14) "Nonintoxicating beer" means all natural cereal malt beverages or products of the
95 brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and
96 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
97 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing
98 at least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by
99 weight, or 15 percent alcohol by volume, whichever is greater. The word "liquor", as used in §60-
100 1-1 *et seq.* of this code, does not include or embrace nonintoxicating beer nor any of the
101 beverages, products, mixtures, or preparations included within this definition.

102 (15) "Nonintoxicating beer floor plan extension" means a temporary one-day extension of
103 an existing Class A licensee's floor plan to a contiguous, adjoining, and bounded area, such as a
104 parking lot or outdoor area, which shall for the temporary period encompass the licensee's
105 licensed premises; further the license shall be endorsed or approved by the county or municipality
106 where the license is located; the license shall be in good standing with the commissioner, and

107 further the temporary event shall cease on or before midnight of the approved temporary one-day
108 event.

109 (16) "Nonintoxicating beer sampling event" means an event approved by the
110 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
111 pursuant to §11-16-11a of this code.

112 (17) "Nonintoxicating beer sampling day" means any days and hours of the week where
113 Class A retail licensees may sell nonintoxicating beer, pursuant to §11-16-11a and §11-16-
114 18(a)(1) of this code, and who are approved, in writing, by the commissioner to conduct a
115 nonintoxicating beer sampling event.

116 (18) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation
117 of barley, malt, hops, or any other similar product or substitute and containing not less than one
118 half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent
119 alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

120 (19) "Original container" means the container used by a resident brewer or brewer at the
121 place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating
122 craft beer for sale at wholesale.

123 (20) "Person" means and includes an individual, firm, partnership, limited partnership,
124 limited liability company, association, or corporation.

125 (21) "Private club" means a license issued pursuant to §60-7-1 *et seq.* of this code.

126 (22) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
127 nonintoxicating craft beer whose principal place of business and manufacture is located in the
128 State of West Virginia; which may also have multiple manufacturing locations located in West
129 Virginia as set forth in §11-16-9 of the code; and which does not brew or manufacture more than
130 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually at all manufacturing
131 locations in the aggregate and does not self-distribute more than 10,000 barrels thereof in the
132 State of West Virginia annually from all manufacturing locations in the aggregate.

133 (23) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating
134 beer and all products regulated by this article, including, but not limited to, malt coolers at his or
135 her established and licensed place of business.

136 (24) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or
137 the commissioner's designee.

**§11-16-6. License in one capacity only; no connection between different licensees; when
brewer may act as distributor; credit and rebates proscribed; brewer, resident
brewer, and brewpub requirements.**

1 (a) A person shall not be licensed in more than one capacity under the terms of this article,
2 and there shall be no connection whatsoever between any retailer, distributor, resident brewer,
3 or brewer, and a person shall be interested, directly or indirectly, through the ownership of
4 corporate stock, membership in a partnership, or in any other way in the business of a retailer, if
5 the person is at the same time interested in the business of a brewer, resident brewer or
6 distributor. A resident brewer may act as distributor in a limited capacity for his or her own product
7 from the resident brewery or place of manufacture or bottling, but a resident brewer, is not
8 permitted to act as a distributor as defined in §11-16-3 of this code: *Provided*, That nothing in this
9 article may prevent a resident brewer from using the services of licensed distributors as specified
10 in this article. A resident brewer or distributor may sell to a patron for personal use and not for
11 resale, quantities of draught beer in original containers that are no larger in size than one-half
12 barrel for off-premises consumption. A resident brewer who also has a brewpub license may sell
13 nonintoxicating beer or nonintoxicating craft beer produced by the resident brewer in cans, bottles,
14 or sealed growlers, pursuant to §11-16-6b of this code, for personal consumption off of the
15 brewpub's licensed premises and not for resale.

16 In order to promote the state's hospitality and tourism industry, as well as promoting
17 economic development within the state by supporting the development of local breweries,
18 including the application for licensure of brewery owners seeking licensure as a resident brewer

19 in this state while licensed in other states, the commissioner may not consider licensure in such
20 other states as a limiting factor or as the basis of licensure denial when evaluating applications
21 for licensure as a resident brewer in this state. Any applicant seeking licensure as a resident
22 brewer in this state (1) must meet all requirements for licensure as a resident brewer in this state,
23 (2) must be in good standing in all other jurisdictions wherein the applicant is licensed as a brewer
24 or resident brewer as such terms are defined in the licensing jurisdiction and, (3) must never have
25 had a license revoked in any other state; *Provided*, that persons licensed as resident brewers in
26 this state are limited to producing 25,000 barrels of non-intoxicating beer and limited to self-
27 distribution rights of 10,000 barrels of non-intoxicating beer, and such production and distribution
28 limits shall apply, in the aggregate, whether produced in another state or West Virginia, as to all
29 non-intoxicating beer produced by a person licensed as a resident brewer in West Virginia.

30 (b) It is unlawful for any brewer, resident brewer, manufacturer, or distributor to assist any
31 retailer or for any retailer to accept assistance from any brewer, manufacturer, or distributor,
32 accept any gifts, loans, forbearance of money or property of any kind, nature, or description, or
33 other thing of value, or give any rebates or discounts of any kind whatsoever, except as permitted
34 by rule, or order promulgated by the commissioner in accordance with this article.

35 (c) Notwithstanding subsections (a) and (b) of this section, a brewpub may offer for retail
36 sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating
37 beer or nonintoxicating craft beer is limited to the brewpub's licensed premises, except as
38 provided in §11-16-6b of this code.

39 (d) A brewer or resident brewer licensed under this section may also be licensed under
40 §60-4-1 *et seq.* of this code: *Provided*, That the holder of the license meets all the requirements
41 for the additional licenses required by the commissioner and pays all fees related to the license:
42 *Provided, however*, That the licensee maintains all the rights and privileges associated with the
43 license.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 regulate, control, and support the brewing, manufacturing, distribution, sale, consumption,
3 transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry
4 in this state in order to protect the public health, welfare, and safety of the citizens of this state,
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or
6 resident brewer with its principal place of business and manufacture located in this state to have
7 certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer
8 manufactured in this state for the benefit of the citizens of this state, the state's growing brewing
9 industry, and the state's hospitality and tourism industry, all of which are vital components for the
10 state's economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal
12 place of business and manufacture located in the State of West Virginia may offer only
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
14 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for
15 consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give,
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business
18 and manufacture located in the State of West Virginia, except for the limited purpose of
19 complimentary samples as permitted in subsection (c) of this section.

20 (c) *Complimentary samples.* — A licensed brewer or resident brewer with its principal
21 place of business and manufacture located in the State of West Virginia may only offer
22 complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the
23 brewer's or resident brewer's principal place of business and manufacture located in the State of
24 West Virginia. The complimentary samples may be no greater than two ounces per sample per

25 patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per
26 day. A licensed brewer or resident brewer providing complimentary samples shall provide
27 complimentary food items to the patron consuming the complimentary samples; and prior to any
28 sampling, verify, using proper identification, that the patron sampling is 21 years of age or over
29 and that the patron is not visibly intoxicated.

30 (d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall
31 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when
32 conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all
33 applicable requirements and penalties in this article. In the interest of promoting tourism
34 throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating
35 beer or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege
36 at private fair and festivals, for off-premises consumption sales of only the brewer or resident
37 brewer's sealed nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an
38 approved private fair and festival, an authorized brewer or resident brewer shall provide a copy
39 of a written agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured
40 by the brewer or resident brewer at the private fair and festival's licensed premises. If approved,
41 an authorized brewer or resident brewer may conduct off-premises consumption sales of their
42 nonintoxicating beer or nonintoxicating craft beer from a designated booth at the private fair and
43 festival as set forth in §60-7-8a of this code. All authorized and approved brewers or resident
44 brewers conducting the off-premises consumption sales shall comply with all retail requirements
45 in §11-16-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees.
46 Additionally, an authorized brewer or resident brewer may provide complimentary samples to
47 patrons who are 21 years of age or over and who are not intoxicated in the amounts set forth in
48 subsection (c).

49 (e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section
50 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any

51 other taxes and fees required, and meet applicable licensing provisions as required by this
52 chapter and by rule of the commissioner.

53 (f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise
54 a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the
55 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating
56 craft beer subject to state and federal requirements or restrictions. The advertisement may not
57 encourage intemperance.

58 (g) *Growler requirements.* — A licensed brewer or resident brewer under this section shall
59 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed
60 brewer or resident brewer under this section shall sanitize, fill, securely seal, and label any growler
61 prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail
62 sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer
63 manufactured by the licensed brewer or resident brewer for personal consumption off of the
64 licensed premises and not for resale. A licensed brewer or resident brewer under this section may
65 refill a growler subject to the requirements of this section. A licensed brewer or resident brewer
66 shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer
67 may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to
68 serve as a sealed beverage container.

69 (h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling
70 growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name
71 of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft
72 beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating
73 craft beer in the growler, and the date the growler was filled or refilled, and, further, all labeling on
74 the growler shall be consistent with all federal labeling and warning requirements.

75 (i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this
76 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state

77 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
78 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
79 lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure
80 to comply with this subsection may result in penalties under §11-16-23 of this code.

81 (j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized
82 under this section to sell growlers.

83 (k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or
84 resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or
85 resident brewer's principal place of business and manufacture located in the State of West
86 Virginia. No more than one brewer or resident brewer license may be issued to a single person
87 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer
88 or resident brewer under this section may only conduct tours, give complimentary samples, and
89 sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed
90 brewer or resident brewer authorized under this section shall be subject to the applicable penalties
91 under §11-16-23 of this code for violations of this section.

92 (l) (1) *Contract Brewing Services Agreements.* - A licensed brewer or resident brewer
93 may enter into contract brewing services agreements with another licensed brewer or resident
94 brewer with its principal place of business and manufacture located in the State of West Virginia
95 for purposes of sharing brewing equipment or facilities as part of the manufacture of
96 nonintoxicating beer or nonintoxicating craft beer. Any such contract brewing services
97 agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration
98 and set forth the following terms and conditions:

99 (A) The licensed brewer or resident brewer serving as the brewer of record and retaining
100 ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer
101 recipe and brand;

102 (B) The licensed brewer or resident brewer who will be responsible for executing any
103 brew of nonintoxicating beer or nonintoxicating craft beer;

104 (C) The location of the facilities to be utilized for the manufacture of the nonintoxicating
105 beer or nonintoxicating craft beer;

106 (D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating
107 craft beer manufactured under the contract brewing services agreement; and

108 (E) The manner of payment of any and all federal and state excise taxes associated with
109 the manufactured nonintoxicating beer or nonintoxicating craft beer.

110 (2) The licensed brewer or resident brewer serving as the brewer of record is
111 responsible for the transportation of the finished and packaged product to their licensed facility,
112 where it must come to rest and be tax determined. Any nonintoxicating beer or nonintoxicating
113 craft beer manufactured pursuant to a contract brewing services agreement shall be credited to
114 the specified brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of
115 this code, and not the licensed brewer or resident brewer responsible for executing any brew on
116 behalf of the brewer of record.

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

**§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a
licensed Class A retail dealer or a third-party; requirements; limitations; third-party
license fee; retail transportation permit; and requirements.**

1 (a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
2 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
3 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a
4 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
5 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer

6 is permitted for off-premises consumption when completed by the licensee or the licensee's
7 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by
8 telephone, a mobile ordering application, or a web-based software program, as authorized by the
9 licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a
10 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
11 process shall meet the requirements of this section. The order, sale, and delivery process is
12 subject to the penalties of this article.

13 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales
14 or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
15 for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer
16 or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed
17 growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating
18 beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A
19 retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer
20 through telephone orders, a mobile ordering application, or a web-based software program. The
21 annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third-
22 party entity, with no limit on the number of drivers and vehicles. The delivery license fee under
23 this subsection may not be prorated nor refunded.

24 (c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall
25 comply with licensure requirements in §11-16-8 of this code, and shall require any information set
26 forth in this article and as reasonably required by the commissioner.

27 (d) *Sale Requirements.* —

28 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the
29 purchase of prepared food, or a meal and the completion of the sale may be accomplished by the
30 delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by
31 the Class A retail dealer or third-party licensee;

32 (2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21
33 years of age or older, may not be visibly or noticeably intoxicated at the time of delivery, and shall
34 meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating
35 craft beer;

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

40 (4) A third-party delivery licensee may not have a pecuniary interest in a Class A retail
41 dealer, as set forth in this article, therefore a third-party delivery licensee may only charge a
42 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The
43 third-party licensee may not collect a percentage of the delivery order for the delivery of alcohol,
44 but may continue to collect a percentage of the delivery order directly related to the prepared food
45 or a meal. The convenience fee charged by the third-party delivery licensee to the person
46 purchasing may not be greater than \$20 per delivery order where nonintoxicating beer or
47 nonintoxicating craft beer are ordered by the purchasing person. For any third-party licensee also
48 licensed for wine growler delivery as set forth in §60-8-6c of this code, or craft cocktail growler
49 delivery as set forth in §60-7-8f of this code, the total convenience fee of any order, sale, and
50 delivery of a sealed growler, wine growler, or craft cocktail growler may not exceed \$5.

51 (e) *Delivery Requirements.* —

52 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating
53 craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third-party
54 delivery licensee shall file each delivery person's name, driver's license, and vehicle information
55 with the commissioner;

56 (2) A Class A retail dealer or third-party delivery licensee shall train delivery persons on
57 verifying legal identification and in identifying the signs of intoxication and shall submit certification
58 of the training to the commissioner;

59 (3) The Class A retail dealer or third-party delivery licensee shall hold a retail transportation
60 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft
61 beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an
62 electronic copy of his or her permit;

63 (4) A Class A retail dealer or third-party delivery licensee may only deliver prepared food
64 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or
65 contiguous counties where the Class A retail dealer is located;

66 (5) A Class A retail dealer or third-party delivery licensee may only deliver prepared food
67 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in
68 West Virginia. A Class A retail dealer or third-party delivery licensee shall pay and account for all
69 sales and municipal taxes;

70 (6) A Class A retail dealer or third-party delivery licensee may not deliver prepared food
71 or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

72 (7) A Class A retail dealer or third-party delivery licensee may only deliver prepared food
73 or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not
74 for resale; and

75 (8) A Class A retail dealer or third-party delivery licensee may not deliver and leave
76 prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any
77 address without verifying a person's age and identification as required by this section.

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

79 (1) The delivery person may only permit the person who placed the order through a
80 telephone, mobile ordering application, or web-based software to accept the prepared food or a

81 meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age
82 verification upon delivery with the delivery person's visual review and age verification;

83 (2) Any mobile ordering application or web-based software used shall create a stored
84 record and image of the purchasing person's legal identification and details of the sale, accessible
85 by the delivery person for verification, and shall include the delivery driver's name and vehicle
86 information and delivery shall be subject to legal identification verification;

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

91 (4) All records are subject to inspection by the commissioner. A Class A retail dealer or
92 third-party delivery licensee shall retain all records for three years, and may not unreasonably
93 withhold the records from the commissioner's inspection; and

94 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be
95 issued a retail transportation permit per §11-16-6d(g) of this code.

96 (g) *Retail Transportation Permit.* —

97 (1) A Class A retail dealer or third-party delivery licensee shall obtain and maintain a retail
98 transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating
99 craft beer.

100 (2) A Class A retail dealer or a third-party licensee shall apply for a permit and provide
101 vehicle and driver information, as required by the commissioner. Upon any change in vehicles or
102 drivers, the Class A retail dealer or third-party delivery licensee shall update the vehicle and driver
103 information with the commissioner within 10 days of the change.

104 (h) *Enforcement.* —

105 (1) A Class A retail dealer or third-party delivery licensee is responsible for any violations
106 committed by their employees or independent contractors under this article, and more than one

107 violation may be issued for a single violation involving multiple Class A retail dealers or licensees,
108 employees, or independent contractors.

109 (2) A license or permit granted by this section is subject to the penalties of probation,
110 monetary fines, suspension, and revocation, as set forth in this article, for violations committed
111 by the Class A retail dealer or third-party delivery licensee, its employees, or independent
112 contractors.

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

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

**§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed
Class B retail dealer or a third-party; requirements; limitations; third-party license
fee; retail transportation permit; and requirements.**

1 (a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
2 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
3 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a
4 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
5 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer
6 is permitted for off-premises consumption when completed by the licensee or the licensee's
7 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a
8 telephone, a mobile ordering application, or web-based software program, as authorized by the
9 licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a
10 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
11 process shall meet the requirements of this section. The order, sale, and delivery process is
12 subject to the penalties of this article.

13 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales
14 or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
15 for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer
16 or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed
17 growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating
18 beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B
19 retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer
20 through a telephone order, a mobile ordering application, or web-based software program. The
21 nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third-
22 party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under
23 this subsection may not be prorated nor refunded.

24 (c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall
25 comply with licensure requirements in §11-16-8 of this code and shall require any information set
26 forth in this article and as reasonably required by the commissioner.

27 (d) *Sale Requirements.* —

28 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the
29 purchase of food and the completion of the sale may be accomplished by the delivery of food and
30 nonintoxicating beer or nonintoxicating craft beer by the licensee or third-party licensee;

31 (2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21
32 years of age or older, may not be visibly or noticeably intoxicated at the time of delivery, and meet
33 the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft
34 beer;

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

37 (4) A third-party delivery licensee may not have a pecuniary interest in a Class B retail
38 dealer, as set forth in this article. A third-party delivery licensee may only charge a convenience

39 fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third-party
40 licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer
41 or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly
42 related to food. The convenience fee charged by the third-party delivery licensee to the
43 purchasing person may not be greater than \$20 per delivery order. For any third-party licensee
44 also licensed for wine delivery, as set forth in §60-8-6f of this code, the total convenience fee for
45 any order, sale, and delivery of sealed wine may not exceed \$20.

46 (e) *Delivery Requirements.* —

47 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating
48 craft beer shall be 21 years of age or older. A Class B retail dealer and a third-party licensee
49 shall file each delivery person's name, driver's license, and vehicle information with the
50 commissioner;

51 (2) A Class B retail dealer and a third-party licensee shall train delivery persons on
52 verifying legal identification and in identifying the signs of intoxication and submit the certification
53 of the training to the commissioner;

54 (3) The Class B retail dealer or third-party delivery licensee shall hold a retail transportation
55 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft
56 beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an
57 electronic copy of his or her permit as proof of the licensure;

58 (4) A Class B retail dealer and a third-party licensee may deliver food and sealed
59 nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail
60 dealer is located;

61 (5) A Class B retail dealer and a third-party licensee may only deliver food and sealed
62 nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class
63 B retail dealer and a third-party licensee shall pay and account for all sales and municipal taxes;

64 (6) A Class B retail dealer and a third-party licensee may not deliver food and
65 nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

66 (7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are
67 only for personal use, and not for resale; and

68 (8) A Class B retail dealer and a third-party licensee shall not deliver and leave food and
69 sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a
70 person's age and identification as required by this section.

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

72 (1) The delivery person may only permit the person who placed the order through a
73 telephone, mobile ordering application, or web-based software to accept the food and
74 nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age
75 verification upon delivery with the delivery person's visual review and age verification;

76 (2) Any mobile ordering application or web-based software used must create a stored
77 record and image of the purchasing person's legal identification and details of the sale, accessible
78 by the delivery person for verification, and shall include the delivery driver's name and vehicle
79 information and delivery shall be subject to legal identification verification;

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

84 (4) All records are subject to inspection by the commissioner. A Class B retail dealer and
85 a third-party licensee shall retain all records for three years, and may not unreasonably withhold
86 the records from the commissioner's inspection; and

87 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be
88 issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

89 (g) *Retail Transportation Permit.* —

90 (1) A Class B retail dealer and a third-party licensee shall obtain and maintain a retail
91 transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

92 (2) A Class B retail dealer or a third-party licensee shall apply for a permit and provide
93 vehicle and driver information, required by the commissioner. Upon any change in vehicles or
94 drivers, Class B retail dealer and a third-party licensee shall update the vehicle and driver
95 information with the commissioner within 10 days of the change.

96 (h) *Enforcement.* —

97 (1) The Class B retail dealer and a third-party licensee are responsible for any violations
98 committed by their employees or independent contractors under this article, and more than one
99 violation may be issued for a single violation involving multiple Class B retail dealers or third-party
100 licensees, employees, or independent contractors.

101 (2) A license or permit granted by this section is subject to the penalties of probation,
102 monetary fines, suspension, and revocation, as set forth in this article, for violations committed
103 by the Class B retail dealer or third-party licensee, their employees, or independent contractors.

104 (3) It is a violation for any Class B retail dealer or third-party licensee, their employees, or
105 independent contractors to break the seal of a growler subject to the maximum penalties available
106 in this article.

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

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to any person who submits an
2 application, accompanied by a license fee and, where required, a bond, and states under oath:

3 (1) The name and residence of the applicant, the duration of the residency, and that the
4 applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership,
5 limited liability company, or corporation, the application shall include the residence of the
6 members or officers. If a person, firm, partnership, limited partnership, limited liability company,

7 association, corporation, or trust applies for a license as a distributor, the person, or in the case
8 of a firm, partnership, limited partnership, limited liability company, association, or trust, the
9 members, officers, trustees, or other persons in active control of the activities of the limited liability
10 company, association, or trust relating to the license, shall include the residency for these persons
11 on the application. All applicants and licensees shall include a manager on the applicant's license
12 application, or a licensee's renewal application, who shall meet all other requirements of licensure.
13 The applicant shall be a United States citizen or a naturalized citizen, pass a background
14 investigation, be at least 21 years of age, be a suitable applicant, and meet other requirements,
15 all as set forth in this article and the rules promulgated hereunder, all in the interest of protecting
16 public health and safety and being a suitable applicant or licensee. In order to maintain licensure,
17 a licensee shall notify the commissioner immediately of a change in managers. If the applicant is
18 a trust or has a trust as an owner, the trustees, or other persons in active control of the activities
19 of the trust relating to the license, shall provide a certification of trust as described in §44D-10-
20 1013 of this code. This certification of trust shall include the excerpts described in §44D-10-
21 1013(e) of this code and shall further state, under oath, the names, addresses, Social Security
22 numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and
23 beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification
24 of trust shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or
25 legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary
26 related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any
27 beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal
28 guardian include in the certification of trust and state under oath his or her name, address, Social
29 Security number, and birth date;

30 (2) The place of birth of the applicant, that he or she is a citizen of the United States and
31 of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant
32 is a corporation organized or authorized to do business under the laws of the state, the application

33 shall state when and where incorporated, the name and address of each officer, and that each
34 officer is a citizen of the United States and a person of good moral character. If the applicant is a
35 firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as
36 an owner, the application shall provide the place of birth of each member of the firm, association,
37 limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or
38 other persons in active control of the activities of the trust relating to the license and that each
39 member or trustee, beneficiary, or other persons in active control of the activities of the trust
40 relating to the license is a citizen of the United States, and if a naturalized citizen, when and where
41 naturalized, each of whom shall qualify and sign the application;

42 (3) The particular place for which the license is desired and a detailed description thereof;

43 (4) The name of the owner of the building and, if the owner is not the applicant, that the
44 applicant is the actual and bona fide lessee of the premises;

45 (5) That the premises or building in which the applicant proposes to do business conforms
46 to all applicable laws of health, fire, and zoning regulation; is a safe and proper place or building;
47 and is not within 200 feet of a school or church measured from front door-to-front door, along the
48 street or streets. This requirement does not apply to a Class B license or to a place occupied by
49 a beer licensee so long as it is continuously so occupied. The prohibition does not apply to a
50 college, university, or church that has notified the commissioner, in writing, that it has no objection
51 to the location of a proposed business in a place or building within 200 feet of the college,
52 university, or church;

53 (6) That the applicant is not incarcerated and has not, in the previous five years before
54 application: (A) Been convicted of a felony; (B) been convicted of a crime involving fraud,
55 dishonesty, or deceit; or (C) been convicted of a felony for violating alcohol-related distribution
56 laws;

57 (7) That the applicant is the only person in any manner pecuniarily interested in the
58 business to be licensed and that no other person is in any manner pecuniarily interested during
59 the continuance of the license; and

60 (8) That the applicant has not during five years preceding the date of the application had
61 a nonintoxicating beer license revoked.

62 (b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license
63 may be issued only upon submission by the trustees or other persons in active control of the
64 activities of the trust relating to the distributor license of a true and correct copy of the written trust
65 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
66 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
67 section is confidential, is not a public record, and is not available for release pursuant to the West
68 Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

69 (c) The provisions and requirements of subsection (a) of this section are mandatory
70 prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner
71 shall refuse to issue the license. In addition to the information furnished in any application, the
72 commissioner may make any additional and independent investigation of each applicant,
73 manager, and of the place to be occupied as necessary or advisable and, for this reason, all
74 applications, with license fee and bond, shall be submitted with all true and correct information.
75 For the purpose of conducting the independent investigation, the commissioner may withhold the
76 granting or refusal to grant the license for a 30-day period or until the applicant has completed
77 the conditions set forth in this section. If it appears that the applicant and manager meet the
78 requirements in the code and the rules, including, but not limited to, have not been convicted of a
79 felony in the previous five years before application, have not been convicted of a crime involving
80 fraud, dishonesty, or deceit in the previous five years before application, have not been convicted
81 of a felony for violating any alcohol-related distribution laws; have not made any false statements
82 or material misrepresentations; involving no hidden ownership; and having no persons with an

83 undisclosed pecuniary interest contained in the application; and if there are no other omissions
84 or failures by the applicant to complete the application, as determined by the commissioner, the
85 commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or
86 nonintoxicating craft beer.

87 (d) The commissioner may refuse a license to any applicant under the provisions of this
88 article if the commissioner is of the opinion:

89 (1) That the applicant or manager has, within the previous five years before application:
90 (A) Been convicted of a felony within the previous five years; (B) been convicted of a crime
91 involving fraud, dishonesty, or deceit; or (C) been convicted of a felony for violating any state or
92 federal alcohol- laws; and (D) that the applicant or the manager is not a suitable applicant;

93 (2) That the place to be occupied by the applicant is not a suitable place; or is within 200
94 feet of any school or church measured from front door to front door along the street or streets.
95 This requirement does not apply to a Class B licensee or to a place now occupied by a beer
96 licensee so long as it is continuously so occupied. The prohibition does not apply to a college,
97 university, or church that has notified the commissioner, in writing, that it has no objection to the
98 location of any such place within 200 feet;

99 (3) That any manager, owner, employee, or other person in a contractual relationship to
100 provide goods or services to the applicant is an active employee of the commissioner; or

101 (4) That the license should not be issued for reason of conduct declared to be unlawful by
102 this article.

**§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of
nonintoxicating beer permitted; distributors; brewers; brewpubs.**

1 (a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of
2 nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active
3 license as required by this article. The license period begins on July 1 of each year and ends on
4 June 30 of the following year. If the license is granted for a shorter period, then the license fee

5 shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That
6 if a licensee fails to complete a renewal application and make payment of its annual license fee
7 in renewing its license on or before June 30 of any subsequent year, then an additional \$150
8 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or
9 refunded, prior to the processing of any renewal application and applicable full year annual license
10 fee; and furthermore, a licensee who continues to operate after the expiration of its license is
11 subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined
12 by the commissioner.

13 (b) The annual license fees are as follows:

14 (1) Retail dealers shall be divided into two classes: Class A and Class B.

15 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the
16 license fee for social, fraternal, or private clubs not operating for profit, and which have been in
17 continuous operation for two years or more immediately preceding the date of application, is \$150:
18 *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment
19 of an annual license tax of \$10 for each dining, club, or buffet car in which the beer is dispensed.
20 Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell
21 nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other
22 Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed,
23 for consumption on the licensed premises or off the licensed premises. Class A licensees may
24 sell nonintoxicating beer or nonintoxicating craft beer for consumption off the licensed premises
25 when it is in a sealed original container and sold for personal use, and not for resale. Class A
26 licensees shall provide prepared food or meals along with sealed nonintoxicating beer or
27 nonintoxicating craft beer in the original container or in a sealed growler as set forth for sales and
28 service in §11-16-6d of this code, to a purchasing person who is in-person or in-vehicle picking
29 up prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-

30 to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly
31 or noticeably intoxicated, and as otherwise specified in this article.

32 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and
33 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to
34 sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for
35 consumption off the licensed premises. A Class B retailer may sell to a purchasing person, for
36 personal use, and not for resale, quantities of draught beer in original containers that are no larger
37 in size than one-half barrel for off-premises consumption. The commissioner may only issue a
38 Class B license to the proprietor or owner of a grocery store. For the purpose of this article, the
39 term "grocery store" means any retail establishment commonly known as a grocery store or
40 delicatessen, and caterer or party supply store, where food or food products are sold for
41 consumption off the premises, and includes a separate and segregated portion of any other retail
42 store which is dedicated solely to the sale of food, food products, and supplies for the table for
43 consumption off the premises. Caterers or party supply stores shall purchase the appropriate
44 licenses from the Alcohol Beverage Control Administration.

45 (C) A Class A retail dealer may contract, purchase, or develop a mobile ordering
46 application or web-based software program to permit the ordering and purchase of nonintoxicating
47 beer or nonintoxicating craft beer, as authorized by the licensee's license. The nonintoxicating
48 beer or nonintoxicating craft beer shall be in a sealed original container or a sealed growler and
49 meet the requirements of §11-16-6d of this code.

50 (2) For a distributor, the license fee is \$1,000 for each place of business.

51 (3) For a brewer or a resident brewer with its principal place of business or manufacture
52 located in this state and who produces:

53 (A) Twelve thousand five hundred barrels or less of nonintoxicating
54 craft beer, the license fee is \$250 for each place of manufacture, and no more than three places
55 of manufacture are permitted for licensure;

56 (B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating
57 beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture, and
58 no more than five places of manufacture are permitted for licensure;

59 (C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the
60 license fee is \$1,500 for each place of manufacture.

61 (D) A brewer or resident brewer licensed under paragraph (A) or (B) of this subdivision
62 shall receive one license for use at all places of manufacture; each place of manufacture shall
63 meet all licensing requirements in this article and the rules; and all places of manufacture shall be
64 noted on the one brewer or resident brewer license in compliance with §11-16-5 and §11-16-6a(k)
65 of this code.

66 (4) For a brewer whose principal place of business or manufacture is not located in this
67 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections
68 (c), (d), and (e) of this section: *Provided*, That a brewer whose principal place of business or
69 manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating
70 beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be
71 subject to the variable license fees of subdivision (3), subsection (b) of this section and the
72 requirements set out in subsections (c), (d), and (e) of this section subject to investigation and
73 approval by the commissioner as to brewer requirements.

74 (5) For a brewpub, the license fee is \$500 for each place of manufacture.

75 (c) As part of the application or renewal application and in order to determine a brewer or
76 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide
77 the commissioner, on a form provided by the commissioner, with an estimate of the number of

78 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it may produce during the
79 year based upon the production capacity of the brewer's or resident brewer's manufacturing
80 facilities and the prior year's production and sales volume of nonintoxicating beer or
81 nonintoxicating craft beer.

82 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a
83 license shall file a final report, on a form provided by the commissioner, that is dated as of June
84 30 of that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
85 barrels and gallons produced at its principal place of business and other sites of manufacture
86 during the prior year.

87 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the
88 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with
89 the application or renewal application for a brewer's or resident brewer's license for that period,
90 then the brewer or resident brewer shall include a remittance for the balance of the license fee
91 pursuant to this section that would be required for the final, higher level of production.

92 (f) Any brewer or resident brewer failing to file the reports required in subsections (c) and
93 (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion
94 of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

95 (g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a
96 nonintoxicating beer floor plan extension is \$50, and the fee may not be prorated or refunded. A
97 licensee shall submit an application, certification that the event meets certain requirements in this
98 code and rules, and any other information required by the commissioner, at least 15 days prior to
99 the event, all as determined by the commissioner.

100 (h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good
101 standing with the commissioner, may apply, on a form provided by the commissioner, to sell,
102 serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption

103 in an outdoor dining area or outdoor street dining area, as authorized by any municipal
104 government or county commission in the which the licensee operates. The Class A retail dealer
105 shall submit to the municipal government or county commission, for approval, a revised floorplan
106 and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the
107 commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or
108 private outdoor dining, the approved and bounded outdoor area need not be adjacent to the
109 licensee's licensed premises, but in close proximity and under the licensee's control with right of
110 ingress and egress. For purposes of this section, "close proximity" means an available area within
111 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a
112 nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in
113 conjunction with a temporary private outdoor dining or temporary private outdoor street dining
114 area set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary
115 private wine outdoor street dining set forth in §60-8-32a of this code.

116 (i) For purposes of this article, "nonintoxicating beer or nonintoxicating craft beer outdoor
117 dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining" includes dining
118 areas that are:

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

121 (2) Open to the air; and

122 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
123 approve a partial enclosure with up to three temporary or fixed walls. Any area where seating is
124 incorporated inside a permanent building with ambient air through HVAC is not considered
125 outdoor dining pursuant to this subsection.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES

§60-3A-3a. Liquor sampling.

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

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

6 (1) The day of the event;

7 (2) The location of the event;

8 (3) The times for the event; and

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

10 (c) Upon approval by the commissioner, a Class A retail licensee may serve a
11 complimentary liquor sample of the approved brand and flavor of the West Virginia product that
12 is purchased by the Class A retail licensee from the commissioner.

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

14 (1) Three separate and individual samples serving per customer verified to be 21 years of
15 age or older; and

16 (2) One and one-half ounces in total volume. Samples may be mixed with each other or
17 with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed one
18 and one-half ounces.

19 (e) Servers at the liquor sampling event shall:

20 (1) Be employees of the Class A retail licensee; and

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

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

25 (1) Under the age of 21 years;

26 (2) Intoxicated.

27 (g) A liquor sampling event shall:

28 (1) Occur only inside the Class A retail licensee's licensed premises; and

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

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

34 (i) Violations of this section are subject to the civil and criminal penalties set forth in §60-
35 3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

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

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

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

5 (2) If the applicant is other than an individual, the name and business address of the
6 applicant; the state of its incorporation or organization; the names and residence addresses of
7 each executive officer and other principal officer, partner, or member of the entity; a copy of the
8 entity's charter or other agreement under which the entity operates; the names and residence
9 addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock,
10 partnership, or other interests in the applicant; and all applicants and licensees must list a
11 manager on the applicant's license application, or a licensee's renewal application. The manager
12 shall meet all other requirements of licensure, including, but not limited to, United States
13 citizenship or naturalization, passing a background investigation, being at least 21 years of age,

14 being a suitable applicant, and being of good moral character, and meet other requirements, all
15 as set forth in the code and the legislative rules, in order for the manager to be able to meet and
16 conduct any regulatory matters, including, but not limited to, licensure or enforcement matters
17 related to the applicant or licensee all in the interest of protecting public health and safety. In order
18 to maintain active licensure, any change by a licensee in any manager listed on an application
19 must be made immediately to the commissioner, in order to verify that the new manager meets
20 licensure requirements;

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

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

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

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

42 (d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-
43 10 of this code and an applicant shall not be issued or eligible to hold a retail license under this
44 article, if the applicant:

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

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

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

ARTICLE 4. LICENSES.

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

1 (a) *Sales of liquor.* — An operator of a distillery, mini-distillery, or micro-distillery may offer
2 liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for
3 consumption off premises only. Except for complimentary samples offered pursuant to §60-6-1 of
4 this code, customers may not consume any liquor on the premises of the distillery, mini-distillery,
5 or micro-distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private

6 manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer
7 license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery,
8 or micro-distillery may offer complimentary samples of alcoholic liquors as authorized by this
9 subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or
10 micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of
11 law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and
12 serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise
13 determined by the residents of the county pursuant to §7-1-3ss of this code.

14 (b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or
15 micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16,
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-
17 26 of this code, and the provisions of §60-3-1 *et seq.* and §60-4-1 *et seq.* of this code, applicable
18 to liquor retailers and distillers. In the interest of promoting tourism throughout the state, every
19 licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized,
20 with a limited off-site retail privilege at private fair and festivals, for off-premises consumption
21 sales of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five
22 days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-
23 distillery shall provide a copy of a written agreement to sell only liquor manufactured by the
24 licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed
25 premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct off-
26 premises consumption sales of their liquor from a designated booth at the private fair and festival
27 as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and
28 micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-
29 3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups,
30 taxes, and fees. Additionally, every authorized distillery, mini-distillery, and micro-distillery may

31 provide complimentary samples to patrons who are 21 years of age and older and who are not
32 intoxicated. The complimentary liquor samples of the licensed distillery, mini-distillery, or micro-
33 distillery's product on any sampling day shall not exceed:

34 (1) Three separate and individual samples serving per customer verified to be 21 years of
35 age or older; and

36 (2) One and one-half ounces in total volume. Samples may be mixed with each other or
37 with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed one
38 and one-half ounces.

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

48 (d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery
49 shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for
50 the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection
51 shall be distributed by the commissioner, at least quarterly, to each market zone retailer located
52 in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone
53 retailer's annual gross prior years pretax value sales. The maximum amount of market zone
54 payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is
55 \$15,000 per annum.

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

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

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

1 (a) An operator of a winery or farm winery may offer wine produced by the winery, farm
2 winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the
3 winery or farm winery for consumption off the premises only. Customers may consume wine on
4 the premises when an operator of a winery or farm winery offers complimentary samples pursuant
5 to §60-6-1 of this code, the winery or farm winery is licensed as a private wine restaurant, or the
6 winery or farm winery is licensed as a private manufacturer club. Customers may not consume
7 any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-
8 1-5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity
9 winery or farm winery license: *Provided*, That under this subsection, a licensed winery or farm
10 winery may offer complimentary samples of wine manufactured by that licensed winery or farm
11 winery for consumption on the premises only on Sundays beginning at 6:00 a.m. in any county
12 in which the same has been approved as provided in §7-1-3ss of this code. Notwithstanding any
13 other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish
14 wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for

15 off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise
16 determined by the residents of the county pursuant to §7-1-3ss of this code.

17 (b) Complimentary samples allowed by the provisions of this section may not exceed two
18 fluid ounces and no more than three samples may be given to a patron in any one day.

19 (c) Complimentary samples may be provided only for on-premises consumption.

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

23 (e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding
24 a multi-capacity license and a private wine restaurant license may offer wine by the drink or glass
25 in a private wine restaurant located on the property of the winery, farm winery, or farm entity
26 licensed pursuant to §60-1-5c of this code.

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

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

33 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
34 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
35 §60-8-1 *et seq.* of this code.

36 (3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant
37 to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original
38 sealed package for the purpose of resale in the original sealed package, if the final purchase of
39 the wine is subject to the excise tax or if the purchase is delivered outside this state.

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

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

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

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

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

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

63 (l) *Building code and tax classification.* — Notwithstanding any provision of this code to
64 the contrary, the mere addition of a winery or farm winery licensed under this article on a property

65 does not change the nature or use of the property which otherwise qualifies as agricultural use
66 for building code and property tax classification purposes.

67 (m) In the interest of promoting tourism throughout the state, every licensed winery or farm
68 winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private
69 fair and festivals, for off-premises consumption sales of only the winery or farm winery's sealed
70 wine. At least five days prior to an approved private fair and festival, an authorized winery or farm
71 winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed
72 winery or farm winery at the private fair and festival's licensed premises. If approved, an
73 authorized licensed winery or farm winery may conduct off-premises consumption sales of their
74 wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code.
75 All authorized and approved wineries and farm wineries' off-premises consumption sales shall
76 comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to
77 all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide
78 complimentary samples to patrons who are 21 years of age and older and who are not intoxicated
79 in the amounts set forth in subsection (b).

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

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

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

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

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

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

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

18 (B) Is a nonprofit social club, which is operated exclusively for the benefit of its members,
19 which pays no part of its income to its shareholders or individual members, which owns or leases
20 a building or other premises to which club are admitted only duly-elected or approved dues-paying
21 members in good standing of the corporation or association and their guests while in the company
22 of a member and to which club the general public is not admitted, and which maintains in the
23 building or on the premises a suitable kitchen and dining facility with related equipment for serving
24 food to members and their guests;

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

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

41 (6) "Private bakery" means an applicant for a private club or licensed private club license
42 that has a primary function of operating a food preparation business that produces baked goods,
43 including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and
44 other baked goods where the applicant or licensee desires to sell baked goods infused with liquor,
45 wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle,
46 or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the
47 baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing
48 alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or
49 nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. The
50 applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-
51 premises consumption. Further, the applicant or licensee shall:

52 (i) Have at least 50 members;

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

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

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

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

70 (7) "Private cigar shop" means an applicant for a private club or licensed private club
71 licensee that has a primary function of operating a cigar shop for sales of premium cigars for
72 consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar
73 consumption is permitted with a limited food menu, which may be met by using a private caterer,
74 for members and guests while the private club applicant or licensee is selling and serving liquor,
75 wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further,
76 the applicant or licensee shall:

77 (A) Have at least 50 members;

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

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

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

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

94 (8) "Private caterer" means a licensed private club restaurant, private hotel, or private
95 resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic
96 liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase
97 wine sold or served at a catering event from a wine distributor. A private caterer shall purchase
98 nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a
99 licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet
100 authorized to sell in the market zone, where the catering event is held. The private caterer or the
101 persons or entity holding the catering event shall:

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

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

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

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

- 109 (E) Provide to the commissioner, at least seven days before the event is to take place:
- 110 (i) The name and business address of the unlicensed private venue where the private
- 111 caterer is to provide food and alcohol for a catering event;
- 112 (ii) The name of the owner or operator of the unlicensed private venue;
- 113 (iii) A copy of the contract or contracts between the private caterer, the person contracting
- 114 with the caterer, and the unlicensed private venue;
- 115 (iv) A floorplan of the unlicensed private venue to comprise the private catering premises,
- 116 which shall only include spaces in buildings or rooms of an unlicensed private venue where the
- 117 private caterer has control of the space for a set time period and where the space safely accounts
- 118 for the ingress and egress of the stated members and guests who will be attending the private
- 119 catering event at the catering premises. The unlicensed private venue's floorplan during the set
- 120 time period as stated in the contract shall comprise the private caterer's licensed premises, which
- 121 is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating
- 122 beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises:
- 123 *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure; (II) have
- 124 other facilities to prepare and serve food and alcohol; (III) have adequate restrooms and sufficient
- 125 building facilities for the number of members and guests expected to attend the private catering
- 126 event; and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;
- 127 (F) Not hold more than 15 private catering events per calendar year. Upon reaching the
- 128 16th event, the unlicensed venue shall obtain its own private club license;
- 129 (G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed
- 130 venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan
- 131 extension for authorization to permit alcohol and food at an outdoor event;
- 132 (H) Meet and be subject to all other private club requirements; and
- 133 (I) Use an age verification system approved by the commissioner.

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

139 (A) Has at least 100 members;

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

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

150 (D) Uses an age verification system approved by the commissioner for the purpose of
151 verifying that persons under the age of 18 who are in the private club bar are accompanied by a
152 parent or legal guardian. If a person under 18 years of age is not accompanied by a parent or
153 legal guardian that person may not be admitted as a guest; and

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

155 (10) "Private food truck" means an applicant for a private club, licensed private club
156 licensee, or licensed private manufacturer's club licensee that has a primary function of operating
157 a food preparation business using an industrial truck, van, or trailer to prepare food and meals for
158 sale at various locations within the state while using a propane or electric generator powered

159 kitchen. The private food truck applicant shall obtain county or municipal approval to operate for
160 food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and
161 service, while providing a food menu for members and guests. The private food truck applicant
162 shall:

163 (A) Have at least 10 members;

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

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

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

176 (E) Provide the commissioner with a list of all locations, including a main business location,
177 where the private food truck operates, and is approved for sales pursuant to subsection (D) of
178 this section, and immediately update the commissioner when new locations are approved by a
179 county or municipality;

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

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

187 (H) Require liquor sold, furnished, tendered, or served pursuant to the license created by
188 this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous
189 market zone where the private food truck has its main business location, all in accordance with
190 §60-3A-1 *et seq.* of this code.

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

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

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

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

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

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

206 (11) "Private club restaurant" means an applicant for a private club or licensed private club
207 licensee that has a primary function of using the licensed premises as a restaurant for serving
208 freshly prepared meals and dining in the restaurant area. The private club restaurant may have a

209 bar area separate from or commingled with the restaurant, seating requirements for members
210 and guests shall be met by the restaurant area. The applicant for a private club restaurant license
211 is an applicant which:

212 (A) Has at least 100 members;

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

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

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

228 (E) May uncork and serve members and guests up to two bottles of wine that a member
229 purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when
230 licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use
231 and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no
232 event may a member or a group of members and guests exceed two sealed bottles or containers
233 of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant

234 and for personal consumption by the member and guests. A member or guest may cork and
235 reseal any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative
236 rules for carrying unconsumed wine off the licensed premises;

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

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

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

250 (A) Has at least 100 members;

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

253 (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator,
254 or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and
255 apparatus as determined by the commissioner on the licensed premises and serves freshly
256 prepared food at least 15 hours per week: *Provided*, That a licensee required by the provisions of
257 this code to serve food on premises in order to lawfully serve alcoholic liquors, beer, wine, or hard
258 cider may meet the requirement of having on-premises food preparation facilities by, during all

259 hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site
260 an operating food truck or other portable kitchen: *Provided, however,* That the approval of the
261 commissioner and the appropriate health department is required to operate as allowed by
262 subsection (a) of this section;

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

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

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

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

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

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

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

286 (A) Has at least 100 members;

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

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

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

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

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

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

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

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

305 (A) Has at least 2,000 members;

306 (B) Offers short-term, daily rate accommodations or lodging for members and their guests
307 amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

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

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

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

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

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

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

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

329 (J) May provide members and guests who are verified by proper form of identification to
330 be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in
331 their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of
332 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider,

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

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

348 (A) Has at least 5,000 members;

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

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

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

357 (E) Owns or leases, controls, operates, and uses acreage amounting to at least 10
358 contiguous acres of bounded or fenced real property which would be listed on the licensee's
359 floorplan and would be used for destination, resort, and large contracted-for group-type events
360 such as weddings, reunions, conferences, meetings, and sporting or recreational events;

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

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

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

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

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

374 (K) May provide members and guests who are verified by proper form of identification to
375 be 21 years of age or older to have access via key or key card to an in-room mini-bar in their
376 rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2
377 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and
378 liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination
379 of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or
380 nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not
381 exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100

382 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half
383 liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups,
384 fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer,
385 hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for
386 sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard
387 cider available for sale shall be purchased from a licensed wine distributor or authorized farm
388 winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the
389 market zone of the licensed premises. The mini-bar shall be checked daily and replenished as
390 needed to benefit the member and guest.

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

393 (A) Has at least 100 members;

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

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

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

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

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

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

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

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

413 (A) Has at least 50 members;

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

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

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

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

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

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

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

432 (18) "Private tennis club" means an applicant for a private club or licensed private club
433 licensee which:

434 (A) Has at least 100 members;

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

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

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

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

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

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

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

453 (19) "Private college sports stadium" means an applicant for a private club or licensed
454 private club licensee that operates a college or university stadium or coliseum for Division I, II, or
455 III and what involves a college public or private or university that is a member of the National
456 Collegiate Athletic Association, or its successor, and uses the facility for football, basketball,

457 baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences,
458 meetings, or other special events and does not maintain daily or regular operating hours as a bar
459 or restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-
460 collegiate sporting events. This license may be issued in the name of the National Collegiate
461 Athletic Association Division I, II, or III college or university or the name of the primary food and
462 beverage vendor under contract with that college or university. All alcohol sales shall take place
463 within the confines of the college or university stadium: *Provided*, That any outside area approved
464 for alcohol sales shall be surrounded by a fence or other barrier prohibiting entry except upon the
465 college or university's express permission, and under the conditions and restrictions established
466 by the college or university, so that the alcohol sales area is closed in order to prevent entry and
467 access by the general public. Further the applicant shall:

468 (A) Have at least 100 members;

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

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

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

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

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

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

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

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

499 (A) Have at least 1,000 members;

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

504 (C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner,
505 on the licensed premises which is capable of serving freshly prepared food or meals to serve its

506 stated members, guests, and patrons who will be attending the event at the private professional
507 sports stadium;

508 (D) Own or lease, control, operate, and use acreage amounting to at least three
509 contiguous acres of bounded or fenced real property, as determined by the commissioner, which
510 would be listed on the professional sports stadium's floorplan and could be used for contracted-
511 for professional sporting events, group-type weddings, reunions, conferences, meetings, or other
512 events;

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

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

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

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

522 (21) "Private farmers market" means an applicant for a private club or licensed private club
523 licensee that operates as an association of bars, restaurants, retailers who sell West Virginia-
524 made products among other products, and other stores who open primarily during daytime hours
525 of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the
526 sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur
527 for on-premises consumption, such as reserved weddings, reserved dinners, pairing events,
528 tasting events, reunions, conferences, meetings, or other special events and does not maintain
529 daily or regular operating hours as a bar or restaurant. All businesses that are members of the
530 association shall agree in writing to be liable and responsible for all sales, service, furnishing,

531 tendering, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer,
532 wine, and hard cider occurring on the entire licensed premises of the private farmer's market,
533 including indoor and outdoor bounded areas, and further the applicant shall:

534 (A) Have at least 100 members;

535 (B) Have one or more members operating a private club restaurant and full kitchen with
536 ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and
537 freezer, and other kitchen utensils and apparatus as determined by the commissioner on the
538 licensed premises and serve freshly prepared food at least 15 hours per week;

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

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

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

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

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

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

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

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

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

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

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

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

576 (A) Has at least 25 members;

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

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

587 (D) Owns or leases, controls, operates, and uses space sufficient to safely operate the
588 licensed premises. The applicant or licensee shall verify that, the property is not less than two
589 acres and is remotely located, subject to the commissioner's approval. The bounded or fenced
590 real property may be listed on the private wedding venue's floorplan and may be used for large
591 events such as weddings, reunions, conferences, meetings, or other events;

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

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

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

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

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

604 (A) Has at least 100 members;

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

609 (C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as
610 determined by the commissioner, on the licensed premises which is capable of serving freshly
611 prepared food, or meals to serve its stated members, guests, and patrons who will be attending
612 the event at the private multi-sport complex. A licensee may contract with temporary food vendors
613 or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport
614 complex not readily accessible by the main facility;

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

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

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

630 sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or
631 nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also
632 operated by the licensee when the golf cart or food truck is located on the private multi-sport
633 complex's licensed premises;

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

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

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

638 (24) "Private coliseum or center" means an applicant for a private club or licensed private
639 club licensee that is open for various events including, but not limited to, musical concerts, bands,
640 sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events,
641 tradeshows, health events, reserved weddings, reunions, retreats, conventions, conferences,
642 meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating
643 beer or wine when conducting or hosting events focused on patrons who are less than 21 years
644 of age, and further the applicant shall:

645 (A) Have at least 5,000 members;

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

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

652 (D) Own or lease, control, operate, and use acreage amounting to at least two contiguous
653 acres of bounded or fenced real property, as determined by the commissioner, which would be
654 listed on the private coliseum or center's floorplan and could be used for contracted-for events,

655 as noted above, or a private fair and festival, as authorized by the commissioner per dual licensing
656 requirements as set forth in §60-7-2a of this code;

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

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

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

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

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

674 (A) Have at least 100 members;

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

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

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

688 (E) Have an association that lists in the application for licensure the entire facility and any
689 inter-connected and adjoining structures on the private food court's floorplan which would
690 compromise the licensed premises, and which would be authorized for the lawful sales, service,
691 and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer
692 throughout the licensed premises whether these activities were conducted in a building or
693 structure while on the private food court's licensed premises and as noted on the private food
694 court's licensed floorplan;

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

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

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

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

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

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

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

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

714 The Department of Natural Resources, the authority governing any county or municipal
715 park, or any county commission, municipality, other governmental entity, public corporation, or
716 public authority operating any park or airport may lease, as lessor, a building or portion thereof or
717 other limited premises in any park or airport to any corporation or unincorporated association for
718 the establishment of a private club pursuant to this article.

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

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

6 (b) A private coliseum or center licensee may host a special event for a private fair and
7 festival licensee on the licensee's licensed premises if both licensees are in good standing with
8 the commissioner and submit to the commissioner the temporary floorplan revisions of the private
9 coliseum or center in which the special event would be held to comprise the special event's lawful

10 premises, which shall only include spaces in buildings or rooms of the private coliseum or center's
11 licensed premises. By contractual agreement between the private coliseum or center licensee
12 and the private fair and festival licensee, the parties shall agree that the private coliseum or center
13 maintains control of its licensed premises, but for a set contracted rental time period. The private
14 fair and festival licensee shall safely account for the ingress and egress of the stated members
15 and guests who will be attending the special event at the licensed premises. During the contracted
16 rental time period, the private fair and festival licensee is wholly responsible and liable for the
17 proper sale and serving of alcoholic liquors and nonintoxicating beer in the area designated as
18 the private fair and festival's temporary floorplan, as set forth in this section. The private fair and
19 festival's temporary floorplan shall comprise the private fair and festival's licensed premises for
20 the temporary special event, which is authorized for the lawful sale, service, and consumption of
21 alcoholic liquors and nonintoxicating beer throughout the private fair and festival's licensed
22 premises during this dually licensed temporary special event: *Provided*, That the private fair and
23 festival's licensed premises dually shared and licensed with the private coliseum or center shall:

- 24 (1) Have facilities to prepare and serve food and alcohol;
- 25 (2) Have adequate restrooms and sufficient building facilities for the expected number of
26 members and guests attending the event;
- 27 (3) Comply with all other requirements of its license in this article; and
- 28 (4) Comply with health, fire, safety, and zoning requirements.
- 29 (c) There is no limit on the number of private fair and festivals that may be held at a private
30 coliseum or center.

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

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

3 (b) The annual license fee for a license issued under the provisions of this article to a
4 private club other than a private club of the type specified in subsection (a) of this section is \$1,000
5 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club
6 restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in
7 §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a
8 private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-
9 hole golf course, private farmers market, private food truck, private college sports stadium, private
10 professional sports stadium, private multi-sport complex, private manufacturer club, or a private
11 tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club
12 restaurant has 1,000 or more members; and \$2,000 if the private club is a private hotel with three
13 or fewer designated areas, a private golf club as defined in §60-7-2 of this code, a private coliseum
14 or center as defined in §60-7-2 of this code, or a private food court as defined in §60-7-2 of this
15 code. If the private club is a private resort hotel as defined in §60-7-2 of this code, the private
16 resort hotel may designate areas within the licensed premises for the lawful sale, service, and
17 consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer as provided
18 for by this article. The annual license fee for a private resort hotel with five or fewer designated
19 areas is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more
20 than 10 designated areas is \$12,500. The annual license fee for a private resort hotel with at least
21 11, but no more than 15 designated areas is \$17,500. The annual license fee for a private resort
22 hotel with no fewer than 15 nor more than 20 designated areas is \$22,500. A private resort hotel
23 that obtained the license and paid the \$22,500 annual license fee may, upon application to and
24 approval of the commissioner, designate additional areas for a period not to exceed seven days
25 for an additional fee of \$150 per day, per designated area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) A private fair and festival license under this section shall be for a duration of no more
13 than 10 consecutive days.

14 (d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served
15 for on-premises consumption by the private fair and festival pursuant to the license created by
16 this section shall be purchased from licensed distributors that service the area in which the private
17 fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in
18 accordance with §11-16-1 *et seq.* of this code. Sealed containers of nonintoxicating beer or
19 nonintoxicating craft beer may be sold for off-premises consumption if the nonintoxicating beer
20 and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set
21 forth in §11-16-6a(d) of this code, who manufactures the nonintoxicating beer or nonintoxicating
22 craft beer in this state. The off-premises consumption sales shall be made pursuant to a written
23 agreement between the private fair and festival and an authorized brewer or resident brewer.
24 Prior to the start of the private fair or festival, an authorized brewer or resident brewer who agrees
25 to offer off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer
26 from a booth or other facility on the private fair and festival's licensed premises must meet the
27 requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or
28 resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft

29 beer sold for off-premises consumption as set forth in §11-16-1 *et seq.* of this code. The
30 authorized and approved brewer, resident brewer, or its licensed representatives may give or sell
31 approved promotional items to private fair and festival members and guests, but not to the private
32 fair and festival's volunteers, independent contractors, or employees.

33 (e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption
34 by the private fair and festival pursuant to the license created by this section shall be purchased
35 from a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq.* of
36 this code and §60-8A-1 *et seq.* of this code, as applicable. Sealed containers of wine or hard cider
37 may be sold for off-premises consumption if the wine or hard cider is being sold by an authorized
38 winery or farm winery, as set forth in §60-4-3b(m) and §60-8A-5(c) of this code, who manufactures
39 that wine or hard cider in this state. The off-premises consumption sales shall be made pursuant
40 to a written agreement between the private fair and festival and an authorized winery or farm
41 winery. An authorized winery or farm winery who agrees to offer their wine or hard cider for off-
42 premises consumption sales from a booth or other facility on the private fair and festival's licensed
43 premises prior to the start of the private fair or festival shall meet the requirements of §60-4-3b(m)
44 and §60-8A-5(c) of this code, as applicable. The written agreement with each authorized winery
45 or farm winery shall account for lawful sales of wine or hard cider sold for off-premises
46 consumption as set forth in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as
47 applicable. The authorized and approved winery, farm winery or its licensed representatives may
48 give or sell approved promotional items to private fair and festival members and guests, but not
49 to the private fair and festival's volunteers, independent contractors, or employees.

50 (f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private
51 fair and festival pursuant to the license created by this section shall be purchased from a licensed
52 retail liquor outlet in the market zone or contiguous market zone where the private fair or festival
53 is occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sealed containers of liquor may

54 be sold for off-premises consumption if the liquor is being sold by an authorized distillery, mini-
55 distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures their liquor in
56 this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-
57 3a(c) of this code shall not apply to these sales. The off-premises consumption sales shall be
58 made pursuant to a written agreement between the private fair and festival and an authorized
59 distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or
60 micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor
61 from a booth or other facility on the private fair and festival's licensed premises prior to the start
62 of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of
63 this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery
64 shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1
65 of this code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed
66 representatives may give or sell approved promotional items to private fair and festival members
67 and guests, but not to the private fair and festival's volunteers, independent contractors, or
68 employees.

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

72 (h) Licensed representatives of an authorized and approved brewer, resident brewer, beer
73 distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-
74 distillery, and liquor broker representatives may attend a private fair and festival and discuss their
75 respective products but shall not engage in the selling, furnishing, tendering, or serving of any
76 nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed
77 representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or
78 micro-distillery that has agreed in writing to conduct sampling and off-premises consumption sales

79 of their respective licensee's products at the private fair and festival, may discuss their respective
80 products and engage in the limited giving of complimentary samples in accordance with §11-16-
81 6a (c) and (d), §60-4-3a (a) and (b), and §60-4-3b (b) and (m) of this code; and the selling of
82 sealed bottles or cans of their respective nonintoxicating beer, nonintoxicating craft beer, wine,
83 hard cider, or liquor products for off-premises consumption. All taxes and fees must be paid on
84 lawful sales.

85 (i) A license issued under this section and the licensee are subject to all other provisions
86 of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may
87 by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or
88 orders as the circumstances of each private fair and festival require, including without limitation,
89 the right to revoke or suspend immediately any license issued under this section prior to any
90 notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no
91 circumstances may the provisions of §60-7-12 of this code be waived or an exception granted
92 with respect thereto.

93 (j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this
94 code.

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

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

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

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

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

1 (a) There is hereby created a special permit designated Class S4 for a qualified permit
2 holder operating in a private outdoor designated area approved by a municipality as set forth in
3 §8-12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and
4 nonintoxicating craft beer for on-premises consumption at a certain public property designated as
5 a private outdoor designated area where multiple private club license type licensees who apply
6 and obtain a qualified permit holder permit shall share liability and responsibility. Each qualified
7 permit holder may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating
8 craft beer as provided in this section.

9 (b) Definitions:

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

13 (2) "Qualified permit holder" means the holder of a Class A license issued under §60-7-1
14 *et seq.* of this code.

15 (c) To be eligible for the license authorized by subsection (a) of this section, the qualified
16 permit holder shall:

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

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

22 (3) Pay a nonrefundable non-prorated annual license fee of \$100 to the commissioner;

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

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

26 (6) Provide the days and hours of operation in the private designated area which cannot
27 exceed the stated private club hours of operation;

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

31 (8) Provide an executed agreement between all qualified permit holders stating that each
32 qualified permit holder is jointly and severally liable for any improper acts or conduct committed
33 in the operation of the private outdoor designated area in conjunction with operation of their Class
34 A license;

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

40 (10) Provide a floorplan for the private outdoor designated area indicating a legally
41 demarcated area that is bounded or utilizes signage to safely account for the ingress and egress
42 of members, patrons, and guests who will be within the private outdoor designated area and also
43 be permitted to carry liquor, wine, nonintoxicating beer, and nonintoxicating craft beer on and off
44 of the qualified permit holders' licensed premises and within the private outdoor designated area
45 when contained in an approved non-glass container. The private outdoor designated area's
46 floorplan does comprise a separate licensed premises authorized only for the lawful consumption
47 of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed
48 premises when lawfully purchased from a qualified permit holder;

49 (11) Meet and be subject to all other private club license type requirements;

50 (12) Provide a plan to prevent members, guests, and patrons from bringing, consuming,
51 or selling alcohol not in an approved non-glass container in the private outdoor designated area;
52 and

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

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

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

60 (e) The commissioner shall enforce any violations of §11-16-1 *et seq.* and chapter 60 of
61 this code committed by qualified permit holders against their permit and their Class A license.

62 (f) A qualified permit holder that is separately authorized for an outdoor dining area or
63 sidewalk dining area may continue to operate those areas in conjunction with the private outdoor
64 designated area subject to the commissioner's requirements.

65 (g) A licensee permitted under this section is subject to all other provisions of this article
66 and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or
67 order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as
68 required by the circumstances of for the operation of qualified permit holders in each private
69 outdoor designated area. The commissioner may revoke or suspend immediately any permit
70 issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code:
71 *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be
72 waived or an exception granted with respect thereto.

ARTICLE 8. SALE OF WINES.

§60-8-6g. Special privilege of Class A private wine restaurant licensee to operate separate, but connected, Class B wine specialty shop license.

1 A Class A private wine restaurant licensee may, in the commissioner's discretion, operate
2 Class B wine specialty shop license for the off-premises sale of nonintoxicating beer and wine in
3 a connected but separately operated area of the Class A private wine restaurant is licensed
4 premises: *Provided*, That each business is licensed separately and operates separate cash
5 registers and maintains separation barriers between the different licensed operations. A licensee
6 who fails to license two inner-connected businesses subjects the licensee to the penalties under
7 this article.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

1 (a) *Sales of hard cider.* — A licensed winery or farm winery with its principal place of
2 business or manufacturing facility located in the State of West Virginia may offer hard cider
3 manufactured by the licensed winery or farm winery for retail sale to customers from the winery's
4 or farm winery's licensed premises for consumption off of the licensed premises only in approved

5 and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal
6 consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish
7 hard cider for consumption on the premises of the principal place of business or manufacturing
8 facility located in the State of West Virginia, except for the limited purpose of complimentary
9 samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth
10 in §60-8-6c(g) of this code.

11 (b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of
12 business or manufacturing facility located in the State of West Virginia may offer complimentary
13 samples of hard cider manufactured at the winery's or farm winery's principal place of business
14 or manufacturing facility located in the State of West Virginia. The complimentary samples may
15 be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six
16 complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery
17 providing complimentary samples shall provide complimentary food items to the patron
18 consuming the complimentary samples; and prior to any sampling, verify, using proper
19 identification, that the patron sampling is 21 years of age or older and that the patron is not
20 noticeably or visibly intoxicated.

21 (c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply
22 with all the provisions applicable to wine retailers when conducting sales of hard cider and is
23 subject to all applicable requirements and penalties. In the interest of promoting tourism
24 throughout the state, every licensed winery or farm winery manufacturing cider in this state is
25 authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises
26 consumption sales of only the winery or farm winery's sealed hard cider. At least five days prior
27 to an approved private fair and festival, an authorized winery or farm winery shall provide a copy
28 of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery
29 at the private fair and festival's licensed premises. If approved, an authorized winery or farm

30 winery may conduct off-premises consumption sales of their hard cider from a designated booth
31 at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved
32 wineries and farm wineries' off-premises consumption sales of hard cider shall comply with all
33 retail requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and
34 specifically with respect to all markups, taxes, and fees.

35 (d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall
36 pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees
37 required, and meet applicable licensing provisions as required by law and by rule of the
38 commissioner.

39 (e) *Advertising.* — A licensed winery or farm winery may advertise a particular brand or
40 brands of hard cider produced by the licensed winery or farm winery and the price of the hard
41 cider subject to state and federal requirements or restrictions. The advertisement may not
42 encourage intemperance or target minors.

43 (f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler
44 filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements
45 in §60-8-6c of this code.

46 (g) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under
47 §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard
48 cider in the wine growler, and no other wine, then the annual non-prorated and nonrefundable
49 license fee is \$50.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

1 Any proprietor or any person in charge of a dance house, concert saloon, theater,
2 museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors

3 are sold or given away, or any place of entertainment injurious to health or morals who admits or
4 permits to remain therein any minor under the age of 18 years, unless accompanied by his or her
5 parent or guardian, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by
6 a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private
7 bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club,
8 private fair and festival, private resort hotel, private hotel, private golf club, private food truck,
9 private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor
10 dining and private outdoor street dining, private multi-vendor fair and festival license, private
11 farmers market, private college sports stadium or coliseum, private professional sports stadium,
12 and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in
13 compliance with, §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D),
14 §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), 60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G),
15 §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H),
16 §60-7-2(24)(H), §60-7-2(25)(H), §60-7-8c(b)(14), §60-7-8d, §60-7-8g(c)(15), and §60-8-32a of
17 this code; or (b) a private club with more than 1,000 members that is in good standing with the
18 Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage
19 Control Commissioner; and which has designated certain seating areas on its licensed premises
20 as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by
21 using a mandatory carding or identification program by which all members or guests being served
22 or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required
23 to provide their proper identification to verify their identity and further that they are of legal drinking
24 age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating
25 beer or nonintoxicating craft beer.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Linn
.....
Clerk of the Senate

Steve Harrison
.....
Clerk of the House of Delegates

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 5: 26

FILED

Originated in the Senate.

In effect 90 days from passage.

Cy P. B. B.
.....
President of the Senate

Ken Hinkle
.....
Speaker of the House of Delegates

The within is *approved* this the *29th*
Day of *March*, 2023.

James O. Eastman
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2023

Time 2:54 pm