

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5294

BY DELEGATES W. CLARK, ESPINOSA, HOWELL, HARDY,

HORST, DITTMAN, MILLER, HOUSEHOLDER, HITE,

CROUSE, AND HORNBY

[Passed March 9, 2024; in effect May 1, 2024.]

OFFICE OF WEST VIRGINIA
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1 AN ACT to amend and reenact the provisions of §11-16-6a and §11-16-11a of the Code of West
2 Virginia, as amended; to amend and reenact §60-3A-3a of said code; to amend and
3 reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-6-1 of said
4 code; to amend and reenact §60-7-2, §60-7-8a, and §60-7-8d of said code; to amend
5 and reenact §60-8-2, §60-8-3, §60-8-6c of said code; to amend said code by adding
6 thereto a new section designated §60-8-8; to amend and reenact §60-8-32a of said
7 code; and to amend and reenact §60-8A-5 of said code, all relating to wine, alcoholic
8 liquors, hard cider and non-intoxicating beer generally; defining terms; removing
9 requirement that certain samples must be complimentary; allowing on-premises
10 consumption of alcoholic beverages at wineries, farm wineries, distilleries, mini
11 distilleries, micro distilleries, brewers or resident brewers under specified conditions;
12 increasing number of samples per patron per day; allowing licensed alcohol
13 representatives to purchase West Virginia product for approved sampling events;
14 modifying sample sizes; authorizing alcohol manufacturers to attend private fairs and
15 festivals, wine festivals, and one day charitable events and sell their manufactured
16 alcohol by the drink or glass for on-premises consumption or by the bottle for off-
17 premises consumption; clarifying that certain alcohol manufacturers may sell sealed
18 bottles for off-premises consumption and on premises bottle service by the glass;
19 modifying definition of close proximity to 300 feet; removing or limiting the ability of
20 political subdivisions to regulate certain conduct of alcohol manufacturers, distilleries,
21 mini-distilleries, micro-distilleries, wineries and farm wineries; removing private
22 manufacturer club licensees' 15 hours per week food service requirement; authorizing
23 simultaneous dual licensing in some circumstances; allowing sale and serving of alcohol,
24 wine, nonintoxicating beer, nonintoxicating craft beer and cider in various types of
25 containers, including glasses and bottles by specified licensees on specified premises;
26 authorizing Class B retail licensees to conduct nonintoxicating beer and liquor sampling

27 events; modifying sample sizes for Class A retail licenses and Class B retail licenses;
28 authorizing licensed brewers and resident brewers to enter into alternating partnership
29 agreements; providing that wineries or farm wineries possessing certain licenses are not
30 subject to the food requirements for private wine restaurants; authorizing licensed
31 representatives to purchase bottles for Class A retail licenses and Class B retail licenses
32 who conduct events; permitting licensed representatives to serve samples; providing for
33 treating fair and festival sales by licensees as on premises sales for the purpose of
34 calculating the two percent of gross sales price of each retail liquor sale for market zone
35 calculations; providing that temporary out of state licensees for one day events are not
36 exempt from background checks required of full licensees; providing that certain licenses
37 are not subject to specified background check requirements; allowing Class A wine
38 licensees to serve food that does not require kitchen preparation; and allowing wineries
39 or farm wineries providing hard cider samples to serve food that does not require kitchen
40 preparation.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide 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
4 industry in this state in order to protect the public health, welfare, and safety of the citizens of
5 this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed
6 brewer or resident brewer with its principal place of business and manufacture located in this
7 state to have certain abilities in order to promote the sale of nonintoxicating beer and
8 nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state,

9 the state's growing brewing industry, and the state's hospitality and tourism industry, all of which
10 are vital components for the state's economy.

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

20 (c) *Samples.* — A licensed brewer or resident brewer with its principal place of business
21 and manufacture located in the State of West Virginia may only offer samples of nonintoxicating
22 beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of
23 business and manufacture located in the State of West Virginia. The samples may be no greater
24 than two ounces per sample per patron, and a sampling shall not exceed 10 two-ounce samples
25 per patron per day. A licensed brewer or resident brewer providing samples shall provide
26 complimentary food items to the patron consuming the samples; and prior to any sampling,
27 verify, using proper identification, that the patron consuming the samples is 21 years of age or
28 over and that the patron is not visibly intoxicated.

29 (d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall
30 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when
31 conducting sales of nonintoxicating beer or nonintoxicating craft beer and is subject to all
32 applicable requirements and penalties in this article. In the interest of promoting tourism
33 throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating
34 beer or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege

35 at private fairs and festivals, for on-premises consumption sales and off-premises consumption
36 sales of only the brewer or resident brewer's nonintoxicating beer or nonintoxicating craft beer.
37 At least five days prior to an approved private fair and festival, an authorized brewer or resident
38 brewer shall provide a copy of a written agreement to sell only nonintoxicating beer or
39 nonintoxicating craft beer manufactured by the brewer or resident brewer at the private fair and
40 festival's licensed premises. If approved, an authorized brewer or resident brewer may conduct
41 on-premises and off-premises consumption sales of their nonintoxicating beer or nonintoxicating
42 craft beer from a designated booth at the private fair and festival as set forth in §60-7-8a of this
43 code. All authorized and approved brewers or resident brewers conducting the on-premises and
44 off-premises consumption sales shall comply with all retail requirements in §11-16-1 *et seq.* of
45 this code, and specifically with respect to all markups, taxes, and fees. Additionally, an
46 authorized brewer or resident brewer may provide, sell, and serve its nonintoxicating beer or
47 nonintoxicating craft beer samples in the amount set forth in subsection (c) of this section and
48 its nonintoxicating beer or nonintoxicating craft beer by the glass or drink, or by the bottle or can
49 for on-premises consumption when licensed as set forth in this article to patrons who are 21
50 years of age or over and who are not intoxicated in the amounts set forth in subsection (c).

51 (e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this
52 section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in
53 addition to any other taxes and fees required, and meet applicable licensing provisions as
54 required by this chapter and by rule of the commissioner.

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

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

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

77 (i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this
78 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
79 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
80 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
81 lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers.
82 Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

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

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

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

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

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

106 (C) The location of the facilities to be used for the manufacture of the nonintoxicating
107 beer or nonintoxicating craft beer;

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

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

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

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

§11-16-11a. Nonintoxicating beer sampling.

1 (a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or
2 Class B retail licensee may, with the written approval of the commissioner, conduct a
3 nonintoxicating beer sampling event on a designated nonintoxicating beer sampling day.

4 (b) At least five business days prior to the nonintoxicating beer sampling, the Class A
5 retail licensee or Class B retail licensee shall submit a written proposal to the commissioner
6 requesting to hold a nonintoxicating beer sampling event, including:

7 (1) The day of the event;

8 (2) The location of the event;

9 (3) The times for the event;

10 (4) The names of up to three specific brands, types, and flavors, if any, of the
11 nonintoxicating beer to be sampled; and

12 (5) A statement indicating that all the nonintoxicating beer brands have been registered
13 and approved for sale in the state by the commissioner.

14 (c) Upon approval by the commissioner, a Class A retail licensee or Class B retail
15 licensee may serve the complimentary nonintoxicating beer samples of the approved brands,
16 types, and flavors that are purchased by the Class A retail licensee or Class B retail licensee,
17 with all taxes paid, from its inventory.

18 (d) The complimentary nonintoxicating beer sample on any nonintoxicating beer
19 sampling day shall not exceed:

20 (1) Three separate and individual sample servings per brand, type, and flavor per
21 customer verified to be 21 years of age or older; and

22 (2) Four ounces in total volume per brand, type, and flavor.

23 (e) Servers at the nonintoxicating beer sampling event shall:

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

25 (2) Be at least 21 years of age or older; and

26 (3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the
27 customer.

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

31 (1) Under the age of 21 years; or

32 (2) Intoxicated.

33 (g) A nonintoxicating beer sampling event shall:

34 (1) Occur only inside the Class A retail licensee's or Class B retail licensee's licensed
35 premises; and

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

37 (h) Any nonintoxicating beer bottle or can used for sampling must be from the inventory
38 of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the
39 seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle or

40 can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed
41 premises immediately following the event.

42 (i) Violations of this section are subject to the civil and criminal penalties set forth in §11-
43 16-18, §11-16-19, §11-16-20, §11-16-22, §11-16-23, §11-16-24 and §11-16-25 of this code.

44 (j) To implement the provisions of this section, the commissioner may promulgate
45 emergency rules pursuant to the provisions of §29a-3-1 of this code or propose rules for
46 legislative approval in accordance with the provisions of §29a -3-1 *et seq.* of this code.

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 or
2 Class B retail licensee 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 or
4 Class B retail licensee shall submit a written proposal to the commissioner informing the
5 Commissioner that the Class A licensee or Class B retail licensee will hold a liquor sampling
6 event, including:

7 (1) The day of the event;

8 (2) The location of the event;

9 (3) The times for the event; and

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

11 (c) Upon approval by the commissioner, a Class A retail licensee or Class B retail
12 licensee may serve a complimentary liquor sample of the approved brand and flavor of the West
13 Virginia product that is purchased by the Class A retail licensee, Class B retail licensee, or from
14 the commissioner. Alternatively, a licensed representative may purchase a sealed bottle of West
15 Virginia product at retail in West Virginia from the Class A retail licensee or Class B retail
16 licensee for use at the licensee's liquor sampling event on an approved sampling day. The

17 licensed representative must submit a promotions form and receive approval prior to purchasing
18 and furnishing a sealed bottle of West Virginia product at retail in West Virginia for a Class A
19 retail licensee or Class B retail licensee. The licensed representative may, upon approval of the
20 licensee, serve the complimentary samples subject to the requirements of this section. Any
21 licensed representative that participates in purchasing sealed bottles of West Virginia product
22 for licensees must make this same or equivalent sampling opportunity available to any Class A
23 retail licensee or Class B retail licensee upon request by the licensee.

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

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

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

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

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

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

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

35 (1) Under the age of 21 years;

36 (2) Intoxicated.

37 (g) A liquor sampling event shall:

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

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

41 (h) Any liquor bottle used for sampling must be from the inventory of the licensee, and
42 clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any

43 liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the
44 licensed premises immediately following the event.

45 (i) Violations of this section are subject to the civil and criminal penalties set forth in §60-
46 3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

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
2 offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for
3 consumption off-premises only. Except for samples offered pursuant to §60-6-1 of this code,
4 customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-
5 distillery, 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-
8 distillery, or micro-distillery may offer 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
11 of 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 on-premises and off-premises consumption sales. — Every licensed distillery,
15 mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-
16 3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-
17 3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and
18 §60-7-1 *et seq.* of this code, applicable to liquor retailers, and distillers. In the interest of
19 promoting tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery
20 manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private

21 fairs and festivals, for on-premises consumption sales served by the drink or glass, off-premises
22 consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's
23 sealed liquor. At least five days prior to an approved private fair and festival, an authorized
24 distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only
25 liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair
26 and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-
27 distillery may conduct on-premises and off-premises consumption sales of its liquor from a
28 designated booth at the private fair and festival as set forth in §60-7-8a of this code. All
29 authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises
30 consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and
31 specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail
32 requirements of §60-7-1 *et seq.* of this code when applicable. Additionally, every authorized
33 distillery, mini-distillery, and micro-distillery may provide samples to patrons who are 21 years of
34 age and older and who are not intoxicated. The liquor samples of the licensed distillery, mini-
35 distillery, or micro-distillery's product on any sampling day shall not exceed:

36 (1) Three separate and individual sample servings per customer verified to be 21 years
37 of age or older; and

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

40 (c) Payment of taxes and fees. — The distillery, mini-distillery, or micro-distillery shall
41 pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as
42 required by this chapter and by rule of the commissioner, except for payments of the wholesale
43 markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That
44 all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-
45 premises consumption is subject of a five percent wholesale markup fee and an 80 cents per
46 case bailment fee to be paid to the commissioner: *Provided, however*, That liquor sold by the

47 distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the
48 commissioner pursuant §60-3A-17 of this code.

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

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

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

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

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

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

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

§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 on-premises or off-premises. Customers may consume
4 wine on-premises by the glass or drink or by the bottle when consumed by the glass when an
5 operator of a winery or farm winery offers samples pursuant to this section and §60-6-1 of this
6 code, and when the winery or farm winery is licensed as a private wine restaurant, or the winery
7 or farm winery is licensed as a private manufacturer club. Customers may not consume any
8 wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-
9 5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity
10 winery or farm winery license: *Provided*, That under this subsection, a licensed winery or farm
11 winery may offer samples of wine manufactured by that licensed winery or farm winery for
12 consumption on-premises during the hours of operation set forth in §60-8-34 of this code.
13 Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may
14 sell, serve, and furnish wine, for on-premises consumption when licensed accordingly during the
15 hours of operation set forth in §60-8-34 of this code unless otherwise determined by the
16 residents of the county pursuant to §7-1-3ss of this code.

17 (b) Restriction by a political subdivision upon activities and events of farm wineries
18 licensed in accordance with §60-4-3b of the code, to market and sell their products shall be
19 reasonable and shall take into account the economic impact on the farm winery of such
20 restriction, the agricultural nature of such activities and events, and whether such activities and

21 events are usual and customary for farm wineries throughout the state of West Virginia and
22 adjacent states. Usual and customary activities and events at farm wineries shall be permitted
23 without local regulation unless there is a substantial impact on the health, safety, or welfare of
24 the public. No local ordinance regulating noise, other than outdoor amplified music, arising from
25 activities and events at farm wineries shall be more restrictive than that in the general noise
26 ordinance. In authorizing outdoor amplified music at a farm winery, the political subdivision shall
27 consider the effect on adjacent property owners and nearby residents.

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

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

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

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

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

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

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

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

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

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

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

57 (h) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code,
58 holding a multi-capacity license and a private wine restaurant license or private manufacturer
59 club license may offer for sale wine by the drink or glass or wine by the bottle when consumed
60 by the glass on the property of the winery, farm winery, or farm entity licensed pursuant to §60-
61 1-5c of this code.

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

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

68 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
69 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
70 §60-8-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

104 (p) In the interest of promoting tourism throughout the state, every licensed winery or
105 farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege
106 at private fairs and festivals, for on-premises consumption sales and off-premises consumption
107 sales of only the winery or farm winery's wine. At least five days prior to an approved private fair
108 and festival, an authorized winery or farm winery shall provide a copy of a written agreement to
109 sell only wine manufactured by the licensed winery or farm winery at the private fair and
110 festival's licensed premises. If approved, an authorized licensed winery or farm winery may
111 conduct on-premises and off-premises consumption sales of its wine from a designated booth at
112 the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved
113 wineries and farm wineries' on-premises and off-premises consumption sales shall comply with
114 all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to all
115 markups, taxes, and fees. Additionally, an authorized winery, farm winery, or unlicensed winery,
116 as referenced in §60-8-3 of this code may provide, sell, and serve wine samples of its wine in
117 the amounts set forth in subsection (b) of this section, wine by the glass or drink, or wine by the
118 bottle, when consumed by the glass, for on-premises consumption to patrons who are 21 years
119 of age and older and who are not intoxicated.

120 (q) Farm Wineries. — A farm winery is permitted to serve and sell wine as authorized by
121 this section without the requirement to serve prepared food or the application of any local health

122 department requirements for food service. Prior to the sale, the licensee shall verify, using
123 proper identification, that any patron purchasing wine is 21 years of age or over and that the
124 patron is not visibly intoxicated.

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

1 The provisions of this chapter may not prevent:

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

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

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

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

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 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
15 and to which club the general public is not admitted, and which maintains in the building or on
16 the premises a suitable kitchen and dining facility with related equipment for serving food to
17 members and their guests;

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

25 (C) Is organized and operated for legitimate purposes which has at least 100 duly-
26 elected or approved dues-paying members in good standing, which owns or leases a building or
27 other 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 are admitted only duly-
29 elected or approved dues-paying members in good standing of the corporation or association
30 and their guests while in the company of a member and to which the general public is not
31 admitted, and which club maintains in the building or on the premises a suitable kitchen and

32 dining facility with related equipment and employs a sufficient number of persons for serving
33 meals to 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 a club has been
36 established, to which are admitted only duly-elected and approved dues-paying members in
37 good standing and their guests while in the company of a member and to which the general
38 public is not admitted, and which maintains in connection with the club a suitable kitchen and
39 dining facility and related equipment and employs a sufficient number of persons for serving
40 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
43 goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding
44 cakes, and other baked goods where the applicant or licensee desires to sell baked goods
45 infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, included: (A) In
46 the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not
47 processed or cooked out of the baked goods; or (C) from an infusion packet containing alcohol
48 no greater than 10 milliliters where the purchaser adds the alcohol. This applicant or licensee
49 may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises or
50 off-premises consumption. The applicant or licensee may sell the baked goods with alcohol
51 added as authorized for on-premises and off-premises consumption. Further, the applicant or
52 licensee shall:

53 (i) Have at least 50 members;

54 (ii) Operate a kitchen that produces baked goods, as specified in this subdivision,
55 including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and
56 cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a
57 refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans,

58 kitchen utensils, and other food consumption apparatus as determined by the commissioner;
59 and (V) food fit for human consumption available to be served during all hours of operation on
60 the licensed premises;

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

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

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

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

79 (A) Have at least 50 members;

80 (B) Operate a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot
81 plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot
82 refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for
83 alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined

84 by the commissioner; and (v) food fit for human consumption available to be served during all
85 hours of operation on the licensed premises;

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

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

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

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

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

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

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

108 (D) Only use its employees, independent contractors, or volunteers to sell and serve
109 alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer who have received

110 certified training in verifying the legal identification, the age of a purchasing person, and the
111 signs of visible, noticeable, and physical intoxication;

112 (E) Provide to the commissioner, at least seven days before the event is to take place:

113 (i) The name and business address of the unlicensed private venue where the private
114 caterer is to provide food and alcohol for a catering event;

115 (ii) The name of the owner or operator of the unlicensed private venue;

116 (iii) A copy of the contract or contracts between the private caterer, the person
117 contracting with the caterer, and the unlicensed private venue;

118 (iv) A floorplan of the unlicensed private venue to comprise the private catering
119 premises, which shall only include spaces in buildings or rooms of an unlicensed private venue
120 where the private caterer has control of the space for a set time period and where the space
121 safely accounts for the ingress and egress of the stated members and guests who will be
122 attending the private catering event at the catering premises. The unlicensed private venue's
123 floorplan during the set time period as stated in the contract shall comprise the private caterer's
124 licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic
125 liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed
126 private catering premises: *Provided*, That the unlicensed private venue shall: (I) Be inside a
127 building or structure; (II) have other facilities to prepare and serve food and alcohol; (III) have
128 adequate restrooms and sufficient building facilities for the number of members and guests
129 expected to attend the private catering event; and (IV) otherwise be in compliance with health,
130 fire, safety, and zoning requirements;

131 (F) Not hold more than 15 private catering events per calendar year. Upon reaching the
132 16th event, the unlicensed venue shall obtain its own private club license;

133 (G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed
134 venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan
135 extension for authorization to permit alcohol and food at an outdoor event;

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

137 (I) Use an age verification system approved by the commissioner.

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

143 (A) Has at least 100 members;

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

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

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

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

159 (10) "Private food truck" means an applicant for a private club, licensed private club
160 licensee, or licensed private manufacturer's club licensee that has a primary function of
161 operating a food preparation business using an industrial truck, van, or trailer to prepare food

162 and meals for sale at various locations within the state while using a propane or electric
163 generator powered kitchen. The private food truck applicant shall obtain county or municipal
164 approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or
165 nonintoxicating craft beer sales and service, while providing a food menu for members and
166 guests. The private food truck applicant shall:

167 (A) Have at least 10 members;

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (11) "Private club restaurant" means an applicant for a private club or licensed private
211 club licensee that has a primary function of using the licensed premises as a restaurant
212 serving freshly prepared meals and dining in the restaurant area. The private club restaurant
213 may have a bar area separate from or commingled within the restaurant where seats

214 requirements for members and guests are met by including the restaurant area. The applicant
215 for a private club restaurant license is an applicant which:

216 (A) Has at least 100 members;

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

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

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

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

239 may cork and reseal any unconsumed wine bottles as provided in §60-8-3 (j) of this code and
240 the legislative rules for carrying unconsumed wine off the licensed premises;

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

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

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

254 (A) Has at least 100 members;

255 (B) Offers tours, may offer samples, and may offer space as a conference center or for
256 meetings;

257 (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator,
258 or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and
259 apparatus as determined by the commissioner on the licensed premises and serves food:
260 *Provided*, That a licensee required by the provisions of this code to serve food on premises in
261 order to lawfully serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, wine,
262 or hard cider may meet the requirement of having on-premises food preparation facilities by,
263 during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling,
264 having on-site an operating food truck or other portable kitchen: *Provided, however*, That the

265 approval of the commissioner and the appropriate health department is required to operate as
266 allowed by subsection (a) of this section;

267 (D) Maintains, at any one time fresh food capable of being prepared in the private
268 manufacturer club's full kitchen. In calculating the food inventory, the commissioner may include
269 television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-
270 packaged foods, or canned prepared foods;

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

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

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

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

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

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

290 (A) Has at least 100 members;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

335 (J) May provide members and guests who are verified by proper form of identification to
336 be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in
337 their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of
338 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider,
339 and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any
340 combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating
341 beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider

342 not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and
343 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any
344 combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall
345 be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard
346 cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased
347 from the licensed distributor in the area where licensed. All wine or hard cider available for sale
348 shall be purchased from a licensed wine distributor or authorized farm winery. All liquor
349 available for sale shall be purchased from the licensed retail liquor outlet in the market zone of
350 the licensed premises. The mini-bar shall be checked daily and replenished as needed to
351 benefit the member and guest.

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

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

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

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

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

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

367 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
368 buildings and structures on the private resort hotel's floorplan comprising the licensed premises
369 which would be authorized for the lawful sales, service, and consumption of alcoholic liquors
370 and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether
371 these activities were conducted in a building or structure or outdoors while on the private resort
372 hotel's licensed premises;

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

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

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

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

382 (K) May provide members and guests who are verified by proper form of identification to
383 be 21 years of age or older to have access via key or key card to an in-room mini-bar in their
384 rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2
385 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and
386 liquor sold from the original sealed container, and the refrigerator may contain: (i) Any
387 combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating
388 beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider
389 not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml,
390 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a
391 half liters; and (iv) any combination of canned or packaged food valued at least \$100. All
392 markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating

393 craft beer, hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer
394 available for sale shall be purchased from the licensed distributor in the area where licensed. All
395 wine or hard cider available for sale shall be purchased from a licensed wine distributor or
396 authorized farm winery. All liquor available for sale shall be purchased from the licensed retail
397 liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily
398 and replenished as needed to benefit the member and guest.

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

401 (A) Has at least 100 members;

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

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

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

412 (E) Lists the entire property from paragraph (D) of this subsection and all adjoining
413 buildings and structures on the private golf club's floorplan comprising the licensed premises
414 which would be authorized for the lawful sales, service, and consumption of alcoholic liquors
415 and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether
416 these activities were conducted in a building or structure or outdoors while on the private golf
417 club's licensed premises;

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

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

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

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

425 (A) Has at least 50 members;

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

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

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

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

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

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

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

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

448 (A) Has at least 100 members;

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

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

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

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

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

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

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

467 (19) "Private college sports stadium" means an applicant for a private club or licensed
468 private club licensee that operates a college or university stadium or coliseum for Division I, II,
469 or III sports and that involves a college public or private or university that is a member of the

470 National Collegiate Athletic Association, or its successor, and uses the facility for football,
471 basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions,
472 conferences, meetings, or other special events and does not maintain daily or regular operating
473 hours as a bar or restaurant. The licensee may sell alcoholic liquors and nonintoxicating beer or
474 nonintoxicating craft beer when conducting or temporarily hosting non-collegiate sporting
475 events. This license may be issued in the name of the National Collegiate Athletic Association
476 Division I, II, or III college or university or the name of the primary food and beverage vendor
477 under contract with that college or university. All alcohol sales shall take place within the
478 confines of the college or university stadium: *Provided*, That any outside area approved for
479 alcohol sales and nonintoxicating beer or nonintoxicating craft beer shall be surrounded by a
480 fence or other barrier prohibiting entry except upon the college or university's express
481 permission, and under the conditions and restrictions established by the college or university, so
482 that the alcohol sales area is closed in order to prevent entry and access by the general public.
483 Further the applicant shall:

484 (A) Have at least 100 members;

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

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

493 (D) Own or lease, control, operate, and use acreage amounting to at least two
494 contiguous acres of bounded or fenced real property, as determined by the commissioner,
495 which would be listed on the private college stadium's floorplan and could be used for

496 contracted-for temporary non-collegiate sporting events, group-type weddings, reunions,
497 conferences, meetings, or other events;

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

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

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

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

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

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

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

521 (C) Operate a restaurant and full kitchen with ovens, as determined by the
522 commissioner, on the licensed premises which is capable of serving freshly prepared food or
523 meals to serve its stated members, guests, and patrons who will be attending the event at the
524 private professional sports stadium;

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

530 (E) List the entire property from paragraph (D) of this subdivision and all adjoining
531 buildings and structures on the private professional sports stadium's floorplan comprising the
532 licensed premises which would be authorized for the lawful sales, service, and consumption of
533 alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed
534 premises whether these activities were conducted in a building or structure or outdoors while on
535 the private professional sports stadium's licensed premises;

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

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

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

540 (21) "Private farmers market" means an applicant for a private club or licensed private
541 club licensee that operates as an association of bars, restaurants, and retailers who sell West
542 Virginia- made products among other products, and other stores who open primarily during
543 daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special
544 events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating
545 craft beer may occur for on-premises consumption, such as reserved weddings, reserved
546 dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events

547 and does not maintain daily or regular operating hours as a bar or restaurant. All businesses
548 that are members of the association shall agree in writing to be liable and responsible for all
549 sales, service, furnishing, tendering, and consumption of alcoholic liquors, nonintoxicating beer,
550 nonintoxicating craft beer, wine, and hard cider occurring on the entire licensed premises of the
551 private farmer's market, including indoor and outdoor bounded areas, and further the applicant
552 shall:

553 (A) Have at least 100 members;

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

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

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

568 (E) Have an association that lists in the application for licensure the entire property and
569 all adjoining buildings and structures on the private farmers market's floorplan which would
570 comprise the licensed premises, which would be authorized for the lawful sales, service, and
571 consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer
572 throughout the licensed premises whether these activities were conducted in a building or

573 structure or outdoors while on the private farmers market's licensed premises and as noted on
574 the private farmers market's floorplan;

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

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

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

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

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

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

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

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

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

597 (A) Has at least 25 members;

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

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

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

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

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

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

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

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

627 (A) Has at least 100 members;

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

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

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

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

647 (F) Lists the entire property from paragraph (E) of this subdivision and all adjoining
648 buildings and structures on the private multi-sport complex's floorplan which would comprise the

649 licensed premises, which would be authorized for the lawful sales, service, and consumption of
650 alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, and hard cider throughout the
651 licensed premises whether these activities were conducted in a building or structure or outdoors
652 while on the private multi-sport complex's licensed premises and as noted on the private multi-
653 sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or
654 nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and
655 also operated by the licensee when the golf cart or food truck is located on the private multi-
656 sport complex's licensed premises;

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

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

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

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

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

669 (B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of
670 event space primarily used for events where parties reserve the coliseum or center venue in
671 advance of the event;

672 (C) Operate a restaurant and full kitchen with ovens, as determined by the
673 commissioner, on the licensed premises and be capable of serving freshly prepared food or

674 meals to its stated members, guests, and patrons who will be attending events at the private
675 coliseum or center;

676 (D) Own or lease, control, operate, and use acreage amounting to at least two
677 contiguous acres of bounded or fenced real property, as determined by the commissioner,
678 which would be listed on the private coliseum or center's floorplan and could be used for
679 contracted-for events, or a private fair and festival, as authorized by the commissioner per dual
680 licensing requirements as set forth in §60-7-2a of this code;

681 (E) List the entire property from paragraph (D) of this subdivision and all adjoining
682 buildings and structures on the private coliseum or center's floorplan comprising the licensed
683 premises which would be authorized for the lawful sales, service, and consumption of alcoholic
684 liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises
685 whether these activities were conducted in a building or structure or outdoors while on private
686 coliseum or center's licensed premises;

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

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

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

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

699 (A) Have at least 100 members;

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

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

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

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

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

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

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

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

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

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

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

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

741 The Division of Natural Resources, the authority governing any county or municipal park,
742 or any county commission, municipality, other governmental entity, public corporation, or public
743 authority operating any park or airport may lease, as lessor, a building or portion thereof or other
744 limited premises in any park or airport to any corporation or unincorporated association for the
745 establishment of a private club pursuant to this article.

**§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
2 festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and
3 nonintoxicating craft 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
15 served for on-premises consumption by the private fair and festival pursuant to the license
16 created by this section shall be purchased from licensed distributors that service the area in
17 which the private fair and festival is held or from a resident brewer acting in a limited capacity as
18 a distributor, all in accordance with §11-16-1 *et seq.* of this code. Nonintoxicating beer or
19 nonintoxicating craft beer may be sold and served by the drink or glass, or by the bottle or can
20 for on-premises consumption and in sealed bottles or cans for off-premises consumption if the
21 nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or
22 resident brewer, as set forth in §11-16-6a of this code, who manufactures the nonintoxicating
23 beer or nonintoxicating craft beer in this state. The on-premises and off-premises consumption
24 sales shall be made pursuant to a written agreement between the private fair and festival and
25 an authorized brewer or resident brewer. Prior to the start of the private fair or festival, an
26 authorized brewer or resident brewer who agrees to offer on-premises and off-premises
27 consumption sales of nonintoxicating beer or nonintoxicating craft beer from a booth or other
28 facility on the private fair and festival's licensed premises must meet the requirements of §11-
29 16-6a(d) of this code. The written agreement with each authorized brewer or resident brewer

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

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

56 (f) Liquor sold, furnished, tendered, or served for on-premises consumption by the
57 private fair and festival pursuant to the license created by this section shall be purchased from a
58 licensed retail liquor outlet in the market zone or contiguous market zone where the private fair
59 or festival is occurring, all in accordance with §60-3A-1 *et seq.* of this code. Liquor may be sold
60 and served for on-premises consumption by the drink off-premises consumption by the sealed
61 bottle if the liquor is being sold by an authorized distillery, mini-distillery, or micro-distillery, as
62 set forth in §60-4-3a of this code, who manufactures its liquor in this state. Off-premises
63 consumption sales shall comply with §60-3A-17 of this code and §60-4-3a(c) of this code shall
64 not apply to these sales. The on-premises and off-premises consumption sales shall be made
65 pursuant to a written agreement between the private fair and festival and an authorized
66 distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or
67 micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor
68 by the bottle from a booth or other facility on the private fair and festival's licensed premises
69 prior to the start of the private fair, festival, or other event must meet the requirements as set
70 forth in §60-4-3a of this code. An authorized licensed distillery, mini-distillery, or micro-distillery
71 which agrees to offer on-premises consumption sales of its manufactured liquor by the drink or
72 glass from a booth or other facility on the premises of the licensed fair and festival must meet
73 the requirements set forth and in §60-7-1 *et seq.* of this code. The written agreement with each
74 authorized distillery, mini-distillery, or micro-distillery shall account for lawful sales of liquor sold
75 for off-premises consumption as set forth in §60-3A-1 *et seq.* of this code. An authorized and
76 approved distillery, mini-distillery, micro-distillery or its licensed representatives may give or sell
77 approved promotional items to private fair and festival members and guests, but not to the
78 private fair and festival's volunteers, independent contractors, or employees.

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

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

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

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

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

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

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

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

**§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating
beer or nonintoxicating craft beer.**

1 (a) With prior approval of the commissioner a private club licensee may sell, serve, and
2 furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or
3 nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may
4 include a temporary private outdoor dining area or temporary private outdoor street dining area.
5 A temporary private outdoor street dining area shall be approved by the municipal government

6 or county commission in which the licensee operates. The commissioner shall develop and
7 make available an application form to facilitate the purposes of this subsection.

8 (b) The private club licensee shall submit to the commissioner: (1) the municipal or
9 county approval of the private outdoor dining area or private outdoor street dining area; and, (2)
10 a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating
11 beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer,
12 subject to the commissioner's requirements, in an approved and bounded outdoor area. The
13 approved and bounded area need not be adjacent to the licensee's licensed premises, but in
14 close proximity, for private outdoor street dining or private outdoor dining. For purposes of this
15 subsection, "close proximity" means an available area within 300 feet of a licensee's licensed
16 premises and under the licensee's control and with right of ingress and egress.

17 (c) This private outdoor dining or private outdoor street dining may be operated in
18 conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth
19 in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining
20 or outdoor street dining set forth in §11-16-9 of this code.

21 (d) For purposes of this section, private outdoor dining and private outdoor street dining
22 include dining areas that are:

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

25 (2) Open to the air; and

26 (3) Not enclosed by fixed or temporary walls; however, the commissioner may
27 seasonally approve a partial enclosure with up to three temporary or fixed walls.

28 Any area where seating is incorporated inside a permanent building with ambient air
29 through HVAC is not considered outdoor dining pursuant to this subsection.

30 (e) A private club restaurant or a private manufacturer club licensed for craft cocktail
31 growler sales must provide food or a meal along with sealed craft cocktail growler sales as set

32 forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and
33 a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is
34 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in
35 this article.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control
4 Commissioner.

5 "Distributor" means any person whose principal place of business is within the State of
6 West Virginia who makes purchases from a supplier to sell or distribute wine to retailers,
7 grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas,
8 private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port,
9 sherry, and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or
10 retailers under authority of this article and maintains a warehouse in this state for the distribution
11 of wine. For the purpose of a distributor only, the term "person" means and includes an
12 individual, firm, trust, partnership, limited partnership, limited liability company, association, or
13 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor
14 licensee, and the trustee or other persons in active control of the activities of the trust relating to
15 the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor
16 license that are unlawful acts or violations of this article, notwithstanding the liability of trustees
17 in §44D-10-1 *et seq.* of this code.

18 "Fortified wine" means any wine to which brandy or other alcohol has been added where
19 the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert

20 wines where the alcohol content by volume is greater than 17 percent and does not exceed 24
21 percent.

22 "Grocery store" means any retail establishment, commonly known as a grocery store,
23 supermarket, delicatessen, caterer, or party supply store, where food, food products, and
24 supplies for the table are sold for consumption off the premises with average monthly sales
25 (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive
26 of inventory of wine) of not less than \$500. The term "grocery store" also includes and means a
27 separate and segregated portion of any other retail store which is dedicated solely to the sale of
28 food, food products, and supplies for the table for consumption off the premises with average
29 monthly sales with respect to the separate or segregated portion, exclusive of sales of wine, of
30 not less than \$500 and an average monthly inventory, exclusive of inventory of wine, of not
31 less than \$500.

32 "Hard Cider" means a type of wine that is derived primarily from the fermentation of
33 apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice
34 concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters;
35 contains at least one half of one percent and less than 12 and one-half percent alcohol by
36 volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing
37 alcohol, and not as wine, wine product, or as a substitute for wine.

38 "Hard Cider Distributor" means any person whose principal place of business is within
39 the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider,
40 but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private
41 wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of
42 this code and maintains a warehouse in this state for the distribution of hard cider, but not other
43 types of wine. For the purpose of a hard cider distributor, the term "person" means and includes
44 an individual, firm, trust, partnership, limited partnership, limited liability company, association,
45 or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor

46 licensee, and the trustee, or any other person or persons in active control of the activities of the
47 trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to
48 the distributor license that are unlawful acts or violations of this article, notwithstanding the
49 liability of trustees in §44D-10-1 *et seq.* of this code.

50 "Licensee" means the holder of a license granted under the provisions of this article.

51 "Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other
52 alcohol has not been added, and which has an alcohol content by volume of at least 15.6
53 percent and less than or equal to 17 percent.

54 "Person" means and includes an individual, firm, partnership, limited partnership, limited
55 liability company, association, or corporation.

56 "Private wine bed and breakfast" means any business with the sole purpose of
57 providing, in a residential or country setting, a hotel, motel, inn, or other such establishment
58 properly zoned as to its municipality or local ordinances, lodging and meals to its customers in
59 the course of their stay at the establishment, which business also: (1) Is a partnership, limited
60 partnership, corporation, unincorporated association, or other business entity which as part of its
61 general business purpose provides meals on its premises to its members and their guests; (2) is
62 licensed under the provisions of this article as to all of its premises or as to a separate
63 segregated portion of its premises to serve wine to its members and their guests when the sale
64 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
65 paying members and their guests while in the company of a member and does not admit the
66 general public.

67 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited
68 partnership, corporation, unincorporated association, or other business entity which has, as its
69 principal purpose, the business of serving meals on its premises to its members and their
70 guests; (2) is licensed under the provisions of this article as to all of its premises or as to a
71 separate segregated portion of its premises to serve wine to its members and their guests when

72 the sale accompanies the serving of food or meals; and (3) admits only duly elected and
73 approved dues-paying members and their guests while in the company of a member and does
74 not admit the general public. Private clubs that meet the private wine restaurant requirements in
75 this definition shall be considered private wine restaurants: *Provided, That, a private wine*
76 *restaurant shall have at least two restrooms: Provided, however, That the two restroom*
77 *requirement may be waived by a written waiver provided from a local health department to the*
78 *commissioner: And provided further, That a private wine restaurant located in an historic*
79 *building may also be relieved of the two restroom requirement if a historic association or district*
80 *with jurisdiction over a historic building provides a written waiver of the requirement to the*
81 *commissioner: And provided further, That in no event shall a private wine restaurant have less*
82 *than one restroom. And provided further, That a winery or farm winery holding a private wine*
83 *restaurant license or a multi-capacity winery or farm winery license is not subject to the food*
84 *service requirements of this subdivision.*

85 "Private wine spa" means any business with the sole purpose of providing commercial
86 facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and
87 relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or
88 stylists, which business also: (1) Is a partnership, limited partnership, corporation,
89 unincorporated association, or other business entity which as part of its general business
90 purpose provides meals on its premises to its members and their guests; (2) is licensed under
91 the provisions of this article as to all of its premises or as to a separate segregated portion of its
92 premises to serve up to two glasses of wine to its members and their guests when the sale
93 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
94 paying members and their guests while in the company of a member, and does not admit the
95 general public.

96 "Retailer" means any person licensed to sell wine at retail to the public at his or her
97 established place of business for off-premises consumption and who is licensed to do so under
98 authority of this article.

99 "Supplier" means any manufacturer, producer, processor, winery, farm winery, national
100 distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of
101 wine to any licensed West Virginia distributor.

102 "Table wine" means a wine with an alcohol content by volume between 0.5 percent and
103 15.5 percent.

104 "Tax" includes within its meaning interest, additions to tax, and penalties.

105 "Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty
106 under the provisions of this article, and any person claiming a refund of tax.

107 "Varietal wine" means any wine labeled according to the grape variety from which the
108 wine is made.

109 "Vintage wine" or "vintage-dated wine" means wines from which the grapes used to
110 produce the wine are harvested during a particular year, or wines produced from the grapes of a
111 particular harvest in a particular region of production.

112 "Wine" means any alcoholic beverage obtained by the natural fermentation of the natural
113 content of grapes, other fruits, or honey or other agricultural products containing sugar to which
114 no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine
115 coolers, and other similar wine-based beverages. Fortified wine and any product defined as or
116 contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*,
117 of this code are excluded from this definition of wine.

118 "Wine specialty shop" means a retailer who deals principally in the sale of table wine,
119 nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with
120 wine and: (1) Who maintains a representative number of wines for sale in his or her inventory
121 which are designated by label as varietal wine, vintage, generic, and/or according to region of

122 production and the inventory shall contain not less than 15 percent vintage or vintage-dated
123 wine by actual bottle count; and (2) who, any other provisions of this code to the contrary
124 notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an
125 alcoholic content of not more than 22 percent alcohol by volume and which have been matured
126 in wooden barrels or casks. All wine available for sale shall be for off-premises consumption
127 except where wine tasting or wine sampling is separately authorized by this code.

§60-8-3. Licenses; fees; general restrictions.

1 (a) No person may engage in business in the capacity of a winery, farm winery, supplier,
2 distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or
3 wine specialty shop without first obtaining a license from the commissioner, nor shall a person
4 continue to engage in any activity after his or her license has expired, been suspended, or
5 revoked. No person may be licensed simultaneously as a distributor and a retailer. No person,
6 except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer.
7 No person except for a winery or farm winery holding a multi-capacity winery or farm winery
8 license may be licensed simultaneously as a supplier and a private wine bed and breakfast,
9 private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a
10 distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine
11 spa. No person except for a winery or farm winery or holding a multi-capacity winery or farm
12 winery license may be licensed simultaneously as a retailer and a private wine bed and
13 breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to
14 engage in any business concerning the manufacture, sale, or distribution of wine may also
15 engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard
16 cider license.

17 (b) The commissioner shall collect an annual fee for licenses issued under this article as
18 follows:

19 (1) One hundred fifty dollars per year for a supplier's license;

20 (2) Two thousand five hundred dollars per year for a distributor's license and each
21 separate warehouse or other facility from which a distributor sells, transfers, or delivers wine
22 shall be separately licensed and there shall be collected with respect to each location, the
23 annual license fee of \$2,500 as provided in this subdivision;

24 (3) One hundred fifty dollars per year for a retailer's license;

25 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any
26 other licensing fees paid by a winery or retailer holding a license. Except for the amount of the
27 license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery
28 acting as a wine specialty shop retailer is subject to all other provisions of this article which are
29 applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

30 (5) One hundred fifty dollars per year for a wine tasting license;

31 (6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each
32 separate bed and breakfast from which a licensee sells wine shall be separately licensed and
33 there shall be collected with respect to each location the annual license fee of \$150 as provided
34 in this subdivision;

35 (7) Two hundred fifty dollars per year for a private wine restaurant license. Each
36 separate restaurant from which a licensee sells wine shall be separately licensed and there
37 shall be collected with respect to each location the annual license fee of \$250 as provided in this
38 subdivision;

39 (8) One hundred fifty dollars per year for a private wine spa license. Each separate
40 private wine spa from which a licensee sells wine shall be separately licensed and there shall be
41 collected with respect to each location the annual license fee of \$150 as provided in this
42 subdivision;

43 (9) One hundred fifty dollars per year for a wine sampling license issued for a wine
44 specialty shop under subsection (n) of this section;

45 (10) No fee for a special one-day license under subsection (p) of this section or for a
46 heritage fair and festival license under subsection (q) of this section;

47 (11) One hundred fifty dollars per year for a direct shipper's license for a licensee who
48 sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells
49 wine, nonfortified dessert wine, port, sherry, or Madeira wines;

50 (12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery
51 license which enables the holder to operate as a retailer, wine specialty shop, supplier, and
52 direct shipper without obtaining an individual license for each capacity; and

53 (13) Two hundred fifty dollars per year for a hard cider distributor's license. Each
54 separate warehouse or other facility from which a distributor sells, transfers, or delivers hard
55 cider shall be separately licensed and there shall be collected with respect to each location the
56 annual license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is
57 licensed as a nonintoxicating beer or nonintoxicating beer distributor, then there is no additional
58 license fee to distribute hard cider.

59 (c) The license period begins on July 1 of each year and ends on June 30 of the
60 following year and if granted for a less period, the fee shall be computed semiannually in
61 proportion to the remainder of the fiscal year.

62 (d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this
63 code, except as provided by subsection (k) of this section.

64 (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as
65 provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party
66 supply store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed
67 as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided*,
68 *however*, That any delicatessen, caterer, or party supply store licensed in both capacities shall
69 maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which
70 exceed the average monthly sales of nonintoxicating beer.

71 (f) A wine specialty shop under this article may also hold a wine tasting license
72 authorizing the retailer to serve complimentary samples of wine in moderate quantities for
73 tasting. The wine specialty shop shall organize a wine taster's club, which has at least 50 duly
74 elected or approved dues-paying members in good standing. The club shall meet on the wine
75 specialty shop's premises not more than one time per week and shall either meet at a time
76 when the premises are closed to the general public, or meet in a separate segregated facility on
77 the premises to which the general public is not admitted. Attendance at tastings shall be limited
78 to duly elected or approved dues-paying members and their guests.

79 (g) A retailer who has more than one place of retail business shall obtain a license for
80 each separate retail establishment. A retailer's license may be issued only to the proprietor or
81 owner of a bona fide grocery store or wine specialty shop.

82 (h)(1) The commissioner may issue a license for the retail sale of wine at any fair or
83 festival which is endorsed or sponsored by the governing body of a municipality or a county
84 commission. The license shall be issued for a term of no longer than 10 consecutive days and
85 the fee for the license is \$250 regardless of the term of the license. The application for the
86 license shall contain information required by the commissioner and shall be submitted to the
87 commissioner at least 30 days prior to the first day when wine is to be sold at the any fair or
88 festival.

89 (2) Notwithstanding subdivision (1) of this subsection, if the applicant for the fair or
90 festival license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-
91 5a of this code, and the event is located on the premises of a winery or a farm winery, then the
92 license fee is \$50 per fair or festival.

93 (3) A licensed winery or a farm winery, which has the fair or festival licensee's written
94 authorization and approval from the commissioner, may, in addition to, or in conjunction with the
95 fair and festival licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed
96 six, three-fluid ounce, tastings or samples per patron, or serve wine by the glass for

97 consumption on the premises during the operation of a fair or festival only; and may sell wine by
98 the bottle for on-premises consumption, when consumed by the glass, and sealed bottles of
99 wine for off-premises consumption: *Provided*, That for licensed wineries or farm wineries at a
100 licensed fair or festival; tastings, samples, on-premises sales, and off-premises sales shall occur
101 under the hours of operation as required in this article, except on Sunday, tastings, samples,
102 and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

103 (4) A fair or festival license may be issued to a "wine club" as defined in this subdivision
104 for a license fee of \$250. The festival or fair committee or the governing body shall designate a
105 person to organize a club under a name which includes the name of the fair or festival and the
106 words "wine club". The license shall be issued in the name of the wine club. A licensee may not
107 sell wine as provided in this subdivision until the wine club has at least 50 dues-paying
108 members who have been enrolled, and to whom membership cards have been issued.
109 Thereafter, new members may be enrolled and issued membership cards at any time during the
110 period for which the license is issued. A wine club licensed under the provisions of this
111 subdivision may sell wine only to its members, and in portions not to exceed eight ounces per
112 serving. The sales shall take place on-premises or in an area cordoned or segregated so as to
113 be closed to the general public, and the general public shall not be admitted to the premises or
114 area. A wine club licensee under the provisions of this subdivision may serve complimentary
115 samples of wine in moderate quantities for tasting. A wine club may not make wine purchases
116 from a direct shipper where the wine may be consumed on the licensed premises of any Class
117 A private wine retail licensee or private club licensee. A wine club which violates the provisions
118 of this subdivision is subject to the penalties in this article.

119 (5) A licensed winery or farm winery approved to participate in a fair or festival under the
120 provisions of this section and the licensee holding the license, or the licensed winery or farm
121 winery approved to attend a licensed fair or festival, is subject to all other provisions of this
122 article and the rules and orders of the commissioner relating to the license: *Provided*, That the

123 commissioner may by rule or order provide for certain waivers or exceptions with respect to the
124 provisions, rules, or orders required by the circumstances of each fair or festival, including,
125 without limitation, the right to revoke or suspend any license issued pursuant to this section prior
126 to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code:
127 *Provided, however,* That under no circumstances shall the provisions of §60-8-20(c) or §60-8-
128 20(d) of this code, be waived nor shall any exception be granted with respect to those
129 subsections.

130 (6) A license issued under the provisions of this section and the licensee holding the
131 license are not subject to the provisions of subsection (g) of this section.

132 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in
133 subsection (q) of this section may conduct the same sampling and sales set forth in subsection
134 (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair
135 and festival license and temporary and limited licensure by the commissioner. An unlicensed
136 winery is subject to the same limits, fees, requirements, restrictions, and penalties set forth in
137 subsection (q) of this section: *Provided,* That the commissioner may by rule or order provide for
138 certain waivers or exceptions with respect to the provisions, rules, or orders required by the
139 circumstances of each fair or festival. The commissioner may revoke or suspend any license
140 issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-
141 8-27 and §60-8-28 of this code: *Provided, however,* That under no circumstances shall the
142 provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be
143 granted with respect to those subsections.

144 (i)(1) The commissioner may issue a special license for the retail sale of wine in a
145 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles
146 the licensee to sell and serve wine for consumption in a professional baseball stadium. For the
147 purpose of this subsection, "professional baseball stadium" means a facility constructed
148 primarily for the use of a major or minor league baseball franchisee affiliated with the National

149 Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or
150 minor league baseball park. Any special license issued pursuant to this subsection shall be for a
151 term beginning on the date of issuance and ending on the next following June 30, and its fee is
152 \$250 regardless of the length of the term of the license. The application for the special license
153 shall contain information required by the commissioner and must be submitted to the
154 commissioner at least 30 days prior to the first day when wine is to be sold at the professional
155 baseball stadium. The special license may be issued in the name of the baseball franchisee or
156 the name of the primary food and beverage vendor under contract with the baseball franchisee.
157 These sales must take place within the confines of the professional baseball stadium. The
158 exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier
159 prohibiting entry except upon the franchisee's express permission, and under the conditions and
160 restrictions established by the franchisee, so that the wine sales area is closed to free and
161 unrestricted entry by the general public.

162 (2) A license issued under this subsection and the licensee holding the license are
163 subject to all other provisions of this article and the rules and orders of the commissioner
164 relating to the special license: *Provided*, That the commissioner may by rule or order grant
165 certain waivers or exceptions to those rules or orders required by the circumstances of each
166 professional baseball stadium. The commissioner may revoke or suspend any license issued
167 pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of
168 this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of
169 this code be waived nor shall any exception be granted concerning those subsections.

170 (3) The commissioner may propose legislative rules for promulgation in accordance with
171 §29A-3-1 *et seq.* of this code to implement this subsection.

172 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
173 restaurant, private wine spa, or a private club under the provisions of this article entitles the
174 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale

175 accompanies the serving of food or a meal to its members and their guests in accordance with
176 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private
177 wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to
178 purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to
179 two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its
180 members and their guests in accordance with the provisions of this article and in accordance
181 with rules promulgated by the commissioner for the purpose of consumption of the wine off
182 premises: *Provided, however*, That a licensed private wine restaurant or a private club may offer
183 for sale, for consumption off-premises, sealed bottles of wine to its customers provided that no
184 more than one bottle is sold per each person over 21 years of age, as verified by the private
185 wine restaurant or private club, for consumption off-premises. The licensees may keep and
186 maintain on its premises a supply of wine in quantities appropriate for the conduct of operations
187 thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private
188 wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as
189 provided by §11-16-1 *et seq.* of this code.

190 (k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner
191 shall propose legislative rules for promulgation in accordance with §29A-1-1 *et seq.* of this code,
192 including, but not limited to, the form of the applications and the suitability of both the applicant
193 and location of the licensed premises.

194 (l) The commissioner shall propose legislative rules for promulgation in accordance with
195 the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and
196 to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this
197 section. Each licensed restaurant shall be charged an additional \$100 per year fee.

198 (m) The commissioner shall establish guidelines to permit wines to be sold in all stores
199 licensed for retail sales.

200 (n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of
201 this code.

202 (o) A licensed wine specialty shop under this article may also hold a wine sampling
203 license authorizing the wine specialty shop to conduct special wine sampling events at its
204 location during regular hours of business. The wine specialty shop may serve up to six
205 complimentary samples of wine, consisting of no more than three fluid ounces each, to any one
206 consumer per day. Persons serving the samples shall be 21 years of age or older and an
207 authorized representative of the licensed wine specialty shop, winery, farm winery, or a
208 representative of a distributor or registered supplier. Distributor and supplier representatives
209 attending wine sampling events shall register with the commissioner. No licensee, employee, or
210 representative may furnish, give, sell, or serve samples of wine to any person less than 21
211 years of age or to a person who is physically incapacitated due to the consumption of alcoholic
212 liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the
213 commissioner for all wine sampling events 30 days prior to the event. Wine sampling events
214 may not exceed six hours per calendar day. Licensees shall purchase all wines used during
215 these events from a licensed farm winery or a licensed distributor.

216 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
217 corporations and associations allowing the sale and serving of wine, and may, if applicable, also
218 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption
219 only, when raising money for athletic, charitable, educational, or religious purposes. "Auction or
220 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid
221 auction, whether or not the auction requires in-presence bidding or online Internet-based
222 electronic bidding through a secure application or website, but shall not include any action in
223 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall
224 contain information required by the commissioner and shall be submitted to the commissioner at
225 least 30 days prior to the event. Accompanying the license application, the applicant shall

226 submit a signed and notarized statement that at least 80 percent of the net proceeds from the
227 charitable event will be donated directly to the nonprofit corporation or organization. Wines used
228 during these events may be donated by, or purchased from, a licensed retailer, a distributor,
229 winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a
230 representative of the duly organized, nonprofit corporation or association which has obtained
231 the one-day license; is in good standing with the state; and obtains the commissioner's approval
232 prior to the one-day license event may, in conjunction with the one-day licensee, exhibit,
233 conduct complimentary tastings, sell samples not to exceed six, three-fluid ounce tastings or
234 samples per patron, sell wine by the glass or by the bottle, when consumed by the glass, for
235 consumption on-premises during the operation of the one-day license event and may sell
236 certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises
237 consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event,
238 the tastings, samples, on-premises sales, and off-premises sales of its wine shall occur under
239 the hours of operation permitted by this article, except on Sunday, tastings, samples, on-
240 premises sales, and off-premises sales of its wine are unlawful between the hours of 2:00 a.m.
241 and 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the
242 requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c)
243 or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those
244 subsections.

245 (q)(1) In addition to the authorization granted to licensed wineries and farm wineries in
246 subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in
247 another state, that is duly licensed in its domicile state, may pay a \$150 nonrefundable and non-
248 prorated fee and submit an application for temporary licensure on a one-day basis for temporary
249 sampling and sale of wine in sealed containers for off-premises consumption at a special one-
250 day license nonprofit event.

251 (2) The application shall include, but is not limited to, the person or entity's name,
252 address, taxpayer identification number, and location; a copy of its licensure in its domicile
253 state; a signed and notarized verification that it produces 50,000 gallons or less of wine per
254 year; a signed and notarized verification that it is in good standing with its domicile state; copies
255 of its federal certificate of label approvals and certified lab alcohol analysis for the wines it
256 desires to temporarily provide samples and temporarily sell wine in sealed containers for off-
257 premises consumption at a special one-day license for a nonprofit event issued under
258 subsection (p) of this section; and any other information as the commissioner may reasonably
259 require: *Provided*, That the background investigation requirement set forth in §60-8-16 of this
260 code is inapplicable to licenses authorized by this subdivision.

261 (3) The applicant winery shall include a list of all wines proposed to be temporarily
262 sampled and temporarily sold by the glass or bottle, when consumed by the glass, for on-
263 premises consumption or in sealed containers for off-premises consumption at a special one-
264 day license for a nonprofit event so that the wines may be reviewed in the interest of public
265 health and safety. Once approved, the submitted wine list creates a temporary wine brand
266 registration for up to two special one-day licenses for a nonprofit event for no additional fee.

267 (4) An applicant winery that receives this temporary special one-day license for a
268 nonprofit event shall provide the commissioner a signed and notarized written agreement
269 acknowledging that the applicant winery understands its responsibility to pay all municipal, local,
270 and sales taxes applicable to the sale of wine in West Virginia.

271 (5) An application must be submitted for each special one-day license for a nonprofit
272 event the applicant winery desires to attend, and the license fee shall cover up to two special
273 one-day licenses for nonprofit events before an additional fee is required. In no circumstance
274 would the winery be permitted to attend more than four special one-day licensed events. Any
275 applicant or unlicensed winery desiring to attend more than four special one-day license for

276 nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate
277 licensure as a winery or a farm winery in this state.

278 (6) Notwithstanding the provisions of this article and requirements for licensure, wine
279 brand registration, payment of wine liter tax, and the winery's appointment of suppliers and
280 distributors, this temporary special one-day license for a nonprofit event, once granted, permits
281 a winery to operate in this limited capacity only at the approved specific, special one-day license
282 for a nonprofit event subject to the limitations contained in this section.

283 (7) The applicant winery shall also apply for and receive a transportation permit to legally
284 transport wine in the state per §60-6-12 of this code.

285 (8) The applicant winery is subject to all applicable violations and/or penalties under this
286 article and the legislative rules that are not otherwise excepted by this subsection: *Provided,*
287 That the commissioner may by rule or order provide for certain waivers or exceptions with
288 respect to the provisions, rules, or orders required by the circumstances of each fair or festival.
289 The commissioner may revoke or suspend any license issued pursuant to this article, prior to
290 any notice or hearing.

291 (r) The commissioner may issue special licenses to heritage fairs and festivals allowing
292 the sale, serving, and sampling of wine from a licensed farm winery. The license application
293 shall contain information required by the commissioner and shall be submitted to the
294 commissioner at least 30 days prior to the event. Wines used during these events may be
295 donated by or purchased from a licensed farm winery. Under no circumstances may the
296 provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect
297 thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-
298 3-1 *et seq.* of this code to implement the provisions of this subsection.

299 (s)(1) The commissioner may issue a special license for the retail sale of wine in a
300 college or university stadium. A license to sell wine granted pursuant to this subsection entitles
301 the licensee to sell and serve wine for consumption in a college or university stadium. For the

302 purpose of this subsection, "college stadium" means a facility constructed primarily for the use
303 of a Division I, II, or III college or university that is a member of the National Collegiate Athletic
304 Association, or its successor, and used as a football, basketball, baseball, soccer, or other
305 Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be
306 for a term beginning on the date of its issuance and ending on the next following June 30, and
307 its fee is \$250 regardless of the length of the term of the license. The application for the special
308 license shall contain information required by the commissioner and must be submitted to the
309 commissioner at least 30 days prior to the first day when wine is to be sold. The special license
310 may be issued in the name of the National Collegiate Athletic Association Division I, II, or III
311 college or university or the name of the primary food and beverage vendor under contract with
312 that college or university. All sales must take place within the confines of the college or
313 university stadium: *Provided*, That the exterior of the area where wine sales may occur shall be
314 surrounded by a fence or other barrier prohibiting entry except upon the college or university's
315 express permission, and under the conditions and restrictions established by the college or
316 university, so that the wine sales area is closed to free and unrestricted entry by the general
317 public.

318 (2) A license issued under this subsection and the licensee are subject to the other
319 requirements of this article and the rules and orders of the commissioner relating to the special
320 license: *Provided*, That the commissioner may by rule or order grant certain waivers or
321 exceptions to those rules or orders as required by the circumstances of each the college or
322 university stadium. The commissioner may revoke or immediately suspend any license issued
323 pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of
324 this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived,
325 nor shall any exception be granted concerning those subsections.

326 (3) The commissioner may propose legislative rules for promulgation in accordance with
327 §29A-3-1 *et seq.* of this code to implement this subsection.

§60-8-6c. Winery and farm winery license to sell wine growlers and provide samples prior to purchasing a wine growler.

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 wine and its industry in this state to protect the public health,
4 welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore,
5 this section authorizes a licensed winery or farm winery with its principal place of business and
6 manufacture located in this state to have certain abilities to promote the sale of wine
7 manufactured in this state for the benefit of the citizens of this state, the state's growing wine
8 industry, and the state's hospitality and tourism industry, all of which are vital components for
9 the state's economy.

10 (b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business
11 and manufacture located in the State of West Virginia may, when licensed under this section,
12 offer only wine manufactured by the licensed winery or farm winery for retail sale to customers
13 from the winery or farm winery's licensed premises for consumption off-premises only in the
14 form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine
15 growler for personal consumption, and not for resale. A licensed winery or farm winery may not
16 sell, give, or furnish its wine for consumption on the premises of the principal place of business
17 and manufacture located in the State of West Virginia, except for the limited purpose of samples
18 as permitted in subsection (c) of this section, for on-premises sales in accordance with §60-4-3b
19 of this code, or for on-premises sales when separately licensed as a private wine restaurant or a
20 private manufacturer club.

21 (c) *Samples.* — A licensed winery or farm winery with its principal place of business and
22 manufacture located in the State of West Virginia may offer samples of wine as set forth in §60-
23 4-3b of this code.

24 (d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply
25 with all the provisions of this article as applicable to wine retailers when conducting wine growler
26 sales and is subject to all applicable requirements and penalties in this article.

27 (e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section
28 shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and
29 fees required, and shall meet applicable licensing provisions as required by this chapter and by
30 rule of the commissioner.

31 (f) *Advertising.* — A licensed winery or farm winery under this section may advertise a
32 particular brand or brands of wine produced by the licensed winery or farm winery and the price
33 of the wine subject to state and federal requirements or restrictions. The advertisement may not
34 encourage intemperance or target minors.

35 (g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the
36 code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other
37 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and
38 is capable of being securely sealed. The growler may be used by an authorized licensee for
39 purposes of off-premises sales only of wine for personal consumption, and not for resale. The
40 wine served and sold in a sealed wine growler may include ice or water mixed with the wine to
41 create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine
42 growlers shall be sanitized daily and shall be under control and served by the licensee from the
43 secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed
44 wine growler is not an open container under state and local law. A wine growler with a broken
45 seal is an open container under state and local law unless it is located in an area of the motor
46 vehicle physically separated from the passenger compartment. For purpose of this article, a
47 secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band,
48 strip, or sleeve extending around the cap or lid of wine growler to form a seal that is broken

49 when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine
50 growler is opened.

51 (h) *Wine Growler requirements.* — A winery or farm winery licensed under this section
52 shall prevent patrons from accessing the secure area where the winery or farm winery fills a
53 wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery
54 under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A
55 licensed winery or farm winery under this section may refill a wine growler subject to the
56 requirements of this section. A winery or farm winery shall visually inspect any wine growler
57 before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that
58 appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage
59 container.

60 (i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling
61 wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers
62 listing the name of the licensee selling the wine growler, the brand of the wine in the wine
63 growler, the alcohol content by volume of the wine in the wine growler, and the date the wine
64 growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal
65 labeling and warning requirements.

66 (j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this
67 section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and
68 county health requirements prior to its filling and sealing. In addition, the licensed winery or farm
69 winery shall sanitize, in accordance with all state and county health requirements, all taps, tap
70 lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers.
71 Failure to comply with this subsection may result in penalties under this article.

72 (k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized
73 under this section to sell wine growlers, but the licensee shall meet all other requirements of this
74 section.

75 (l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or
76 farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery
77 or farm winery's principal place of business and manufacture located in the State of West
78 Virginia. A licensed winery or farm winery authorized under this section is subject to the
79 applicable penalties under this article for violations of this section.

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

**§60-8-8. Authorizing wineries and farm wineries to sell and serve wine at fairs and
festivals.**

1 All wineries and farm wineries also possessing a Class A wine license or private
2 manufacturer club license may serve and sell wine as set forth in §60-4-3b and §60-8-3 of this
3 code at any licensed fair or festival in the state of West Virginia, subject to the fair or festival
4 licensee granting the winery or farm winery permission to do so in writing.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

1 (a) With prior approval of the commissioner, a Class A wine licensee may sell, serve,
2 and furnish wine for on premises consumption in a legally demarcated area which may include a
3 temporary private wine outdoor dining area or a temporary private wine outdoor street dining
4 area. A temporary private wine outdoor street area shall be approved by the municipal
5 government or county commission in which the licensee operates. The commissioner shall
6 develop and make available an application form to facilitate the purposes of this subsection.

7 (b) The Class A wine licensee shall submit to a municipality or county commission for
8 the approval of the private wine outdoor dining area or private wine outdoor street dining area
9 and submit to the municipality or county commission a revised floorplan requesting to sell wine,
10 subject to the commissioner's requirements, in an approved and bounded outdoor area. For
11 private wine outdoor street dining or private wine outdoor dining the approved and bounded
12 outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity
13 and under the licensee's control and with right of ingress and egress. For purposes of this
14 section, "close proximity," means an available area within 300 feet of the licensee's licensed
15 premises.

16 (c) This private wine outdoor dining or private wine outdoor street dining may be
17 operated in conjunction with a private outdoor dining or private outdoor street dining area set
18 forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor
19 dining or outdoor street dining set forth in §11-16-9 of this code.

20 (d) For purposes of this section, "private wine outdoor dining and private wine outdoor
21 street dining" include dining areas that are:

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

24 (2) Open to the air; and

25 (3) Not enclosed by fixed or temporary walls; however, the commissioner may
26 seasonally approve a partial enclosure with up to three temporary or fixed walls.

27 Any areas where seating is incorporated inside a permanent building with ambient air
28 through HVAC is not considered outdoor dining pursuant to this subsection.

29 (e) Class A licensees licensed for on-premises sales shall provide food, which may be
30 pre-packaged food not requiring kitchen preparation, or a meal along with sealed wine in the
31 original container or a sealed wine growler sales and service as set forth in this section and in
32 §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed

33 wine in the original containers or sealed wine growlers ordered-to-go, subject to verification that
34 the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and
35 as otherwise specified in this article.

36 (f) West Virginia farm wineries possessing a Class A license may serve and sell wine by
37 the glass or by the bottle in accordance with §60-4-3b and §60-8-32a of this code.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide 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
4 winery's or farm winery's licensed premises for consumption off-premises only in approved and
5 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 samples as
9 permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-
10 6c(g) of this code. Customers may consume hard cider on-premises when an operator of a
11 winery or farm winery is licensed as a private wine restaurant or a private manufacturer club.

12 (b) Samples. — A licensed winery or farm winery with its principal place of business or
13 manufacturing facility located in the State of West Virginia may offer samples of hard cider
14 manufactured at the winery's or farm winery's principal place of business or manufacturing
15 facility located in the State of West Virginia. The samples may be no greater than three fluid
16 ounces per sample per patron, and a sampling shall not exceed six complimentary three fluid
17 ounce samples per patron per day. A licensed winery or farm winery providing samples shall

18 provide food, which may be pre-packaged food not requiring kitchen preparation, items to the
19 patron consuming the samples; and prior to any sampling, verify, using proper identification, that
20 the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly
21 intoxicated. The winery or farm winery is subject to the hours of operation set forth in §60-8-34
22 of this code.

23 (c) Retail sales. — Every licensed winery or farm winery under this section shall comply
24 with all the provisions applicable to wine retailers when conducting sales of hard cider and is
25 subject to all applicable requirements and penalties. A winery or a farm winery holding a private
26 wine restaurant license or private manufacturer club license may offer for sale and service hard
27 cider by the drink or glass or cider by the bottle when consumed by the glass on the property of
28 the winery or farm winery. In the interest of promoting tourism throughout the state, every
29 licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-
30 site retail privilege at private fair and festivals, for off-premises consumption sales of the winery
31 or farm winery's sealed hard cider. At least five days prior to an approved private fair and
32 festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell
33 only hard cider manufactured by the licensed winery or farm winery at the private fair and
34 festival's licensed premises. If approved, an authorized winery or farm winery may conduct on-
35 premises and off-premises consumption sales of their hard cider from a designated booth at the
36 private fair and festival as set forth in §60-7-8a of this code. All authorized and approved
37 wineries and farm wineries' on-premises and off-premises consumption sales of hard cider shall
38 comply with all retail requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this
39 code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized
40 winery or farm winery may provide, sell, and serve hard cider samples in the amounts set forth
41 in subsection(b) of this section, hard cider by the glass or drink, or hard cider by the bottle when
42 consumed by the glass of its hard cider for on-premises consumption to patrons who are 21
43 years of age and older and who are not intoxicated.

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

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

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

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

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

Steve Harrison
Clerk of the House of Delegates

Joe Lavin
Clerk of the Senate

FILED
2024 MAR 27 A 11: 09
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the House of Delegates.

In effect May 1, 2024.

Don Hancock
Speaker of the House of Delegates

C. P. B. S.
President of the Senate

The within is *approved* this the *27th*
Day of *March*, 2024.

James Justice
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am