

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 5295**

BY DELEGATES W. CLARK, WILLIS, MARPLE, YOUNG,  
SHAMBLIN, HORNBY, HITE, HALL, MAYNOR, E. PRITT, AND

LUCAS

[Passed March 4, 2024; in effect from passage.]



1 AN ACT to amend and reenact §8-12-26 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §60-7-2a, §60-7-8a, and §60-7-8g of said code, all relating to  
3 expressly authorizing a private outdoor designated area to simultaneously host multiple  
4 qualified permit holders, including but not limited to a special S2 licensed and properly  
5 insured private fair and festival; providing that private outdoor designated areas may  
6 simultaneously host multiple permit holders; defining a term; providing that the dual  
7 licensing of private fairs and festivals simultaneous to other qualified permit holders is  
8 permissible; and eliminating the joint and several liability of qualified permit holders.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (c) The municipality shall provide to the commissioner notice of the approval of the private  
33 outdoor designated area and identify the qualified permit holders that will be applying for permits  
34 set forth in §60-7-8g of this code. As set forth in §60-7-2a of this code, a private outdoor  
35 designated area may simultaneously have multiple qualified permit holders as defined in §60-7-1  
36 *et seq.* of the code, and is expressly authorized.

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

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

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

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

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

6 (b) A private coliseum or center licensee may host a special event for a private fair and  
7 festival licensee on the licensee's licensed premises if both licensees are in good standing with  
8 the commissioner and submit to the commissioner the temporary floorplan revisions of the private  
9 coliseum or center in which the special event would be held to comprise the special event's lawful  
10 premises, which shall only include spaces in buildings or rooms of the private coliseum or center's  
11 licensed premises. By contractual agreement between the private coliseum or center licensee  
12 and the private fair and festival licensee, the parties shall agree that the private coliseum or center  
13 maintains control of its licensed premises, but for a set contracted rental time period. The private  
14 fair and festival licensee shall safely account for the ingress and egress of the stated members

15 and guests who will be attending the special event at the licensed premises. During the contracted  
16 rental time period, the private fair and festival licensee is wholly responsible and liable for the  
17 proper sale and serving of alcoholic liquors and nonintoxicating beer in the area designated as  
18 the private fair and festival's temporary floorplan, as set forth in this section. The private fair and  
19 festival's temporary floorplan shall comprise the private fair and festival's licensed premises for  
20 the temporary special event, which is authorized for the lawful sale, service, and consumption of  
21 alcoholic liquors and nonintoxicating beer throughout the private fair and festival's licensed  
22 premises during this dually licensed temporary special event: *Provided*, That the private fair and  
23 festival's licensed premises dually shared and licensed with the private coliseum or center shall:

- 24 (1) Have facilities to prepare and serve food and alcohol;
- 25 (2) Have adequate restrooms and sufficient building facilities for the expected number of  
26 members and guests attending the event;
- 27 (3) Comply with all other requirements of its license in this article; and
- 28 (4) Comply with health, fire, safety, and zoning requirements.
- 29 (c) There is no limit on the number of private fair and festivals that may be held at a private  
30 coliseum or center.
- 31 (d) The ability for a private outdoor designated area as defined in §8-12-26 of the code to  
32 simultaneously have multiple qualified permit holders as defined in §60-7-1 *et seq.* of the code, is  
33 expressly authorized.

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

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

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

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

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

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

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

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

31 approved promotional items to private fair and festival members and guests, but not to the private  
32 fair and festival's volunteers, independent contractors, or employees.

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

51 (f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private  
52 fair and festival pursuant to the license created by this section shall be purchased from a licensed  
53 retail liquor outlet in the market zone or contiguous market zone where the private fair or festival  
54 is occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sealed containers of liquor may  
55 be sold for off-premises consumption if the liquor is being sold by an authorized distillery, mini-  
56 distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures their liquor in

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

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

73 (h) Licensed representatives of an authorized and approved brewer, resident brewer, beer  
74 distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-  
75 distillery, and liquor broker representatives may attend a private fair and festival and discuss their  
76 respective products but shall not engage in the selling, furnishing, tendering, or serving of any  
77 nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed  
78 representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or  
79 micro-distillery that has agreed in writing to conduct sampling and off-premises consumption sales  
80 of their respective licensee's products at the private fair and festival, may discuss their respective  
81 products and engage in the limited giving of complimentary samples in accordance with §11-16-  
82 6a (c) and (d), §60-4-3a (a) and (b), and §60-4-3b (b) and (m) of this code; and the selling of

83 sealed bottles or cans of their respective nonintoxicating beer, nonintoxicating craft beer, wine,  
84 hard cider, or liquor products for off-premises consumption. All taxes and fees must be paid on  
85 lawful sales.

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

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

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

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

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

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

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

1 (a) There is hereby created a special permit, designated Class S4, for the sale of liquor,  
2 wine, nonintoxicating beer, and nonintoxicating craft beer in a private outdoor designated area  
3 that has been approved by a municipality pursuant to §8-12-26 of this code. Each Class S4  
4 permittee may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft  
5 beer as provided in this section.

6 (b) Definitions:

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

10 (2) "Qualified permit holder" means the holder of a Class A, Class B, or Class S2 license  
11 issued under this article that elects to operate within a private outdoor designated area, and a  
12 Class S4 special permit pursuant to §60-7-1 *et seq.* of this code.

13 (c) To be eligible for the special permit authorized by subsection (a) of this section, the  
14 qualified permit holder shall:

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

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

20           (3) Pay a nonrefundable non-prorated annual special permit fee of \$100 to the  
21 commissioner;

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

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

25           (6) Provide the days and hours of operation in the private designated;

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

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

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

43           (10) Meet and be subject to all other applicable license requirements;

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

47 (12) Use an age verification system approved by the commissioner.

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

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

54 (f) The commissioner shall enforce any violations of §11-16-1 *et seq.* and chapter 60 of  
55 this code committed by qualified permit holders against their permit and their Class A, Class B,  
56 or Class S2 license.

57 (g) A qualified permit holder that is separately authorized for an outdoor dining area or  
58 sidewalk dining area may continue to operate those areas in conjunction with the private outdoor  
59 designated area subject to the commissioner's requirements. Notwithstanding any other section  
60 of the code, a private outdoor designated area is authorized to simultaneously host multiple  
61 qualified permit holders as defined in §60-7-1 *et seq.* of the code.

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



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

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2024.

.....  
*Governor*