

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2025**

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Passed April 10, 2021; in effect May 10, 2021.]



1 AN ACT to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended, to  
2 amend and reenact §11-16-9 and §11-16-18 of said code; to amend said code by adding  
3 thereto four new sections, designated §11-16-6d, §11-16-6e, §11-16-6f and §11-16-11c;  
4 to amend said code by adding thereto two new sections, designated §19-2-12 and §19-2-  
5 13; to amend and reenact §60-1-5a of said code; to amend said code by adding thereto a  
6 new section, designated §60-3A-3b; to amend and reenact §60-3A-25 of said code; to  
7 amend and reenact §60-4-3a and §60-4-3b of said code; to amend said code by adding  
8 thereto a new section, designated §60-4-3c; to amend and reenact §60-6-8 of said code;  
9 to amend and reenact §60-7-2, §60-7-6, and §60-7-12 of said code; to amend said code  
10 by adding thereto five new sections, designated §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e,  
11 and §60-7-8f; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-20, §60-  
12 8-29 and §60-8-34 of said code; to amend said code by adding thereto five new sections,  
13 designated §60-8-6c, §60-8-6d, §60-8-6e, §60-8-6f and §60-8-32a; to amend said code  
14 by adding thereto a new article, designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-  
15 8A-5, and §60-8A-6; and to amend and reenact §61-8-27 of said code, all relating to  
16 nonintoxicating beer, nonintoxicating craft beer, liquor, wine, and hard cider sales in this  
17 state; providing for changing the time for nonintoxicating beer, nonintoxicating craft beer,  
18 liquor, and wine sales to begin at 6:00 a.m. on all days of the week for on and off premises  
19 licensees; authorizing Class A and Class B licensed retailers and third parties to obtain a  
20 license to deliver nonintoxicating beer and nonintoxicating craft beer; allowing the sale,  
21 ordering, and delivery of nonintoxicating beer and nonintoxicating craft beer by a  
22 telephone, mobile ordering application or web-based software program; setting forth sale,  
23 delivery and telephone, mobile ordering application or web-based software program  
24 requirements; providing for enforcement; exempting Class A and Class B licensees from  
25 an additional licensing fee, and establishing a license fee for third parties, and requiring a  
26 nonintoxicating beer retail transportation permit for delivery vehicles; establishing a

27 nonintoxicating beer and nonintoxicating craft beer direct shippers license to allow  
28 shipping in state and out of state; providing license requirements, shipping requirements,  
29 limitations, and fees; requiring the payment of fees and taxes, the maintenance of records  
30 and the preparation of reports; providing for penalties, criminal penalties, and jurisdiction  
31 for direct shipping licensees; authorizing Class A and Class B licensees to sell and deliver  
32 sealed nonintoxicating beer and nonintoxicating craft beer for consumption off the  
33 premises if certain conditions are met; providing certain licensees with the authority to sell,  
34 serve, and furnish nonintoxicating beer and nonintoxicating craft beer in approved  
35 outdoor dining areas, and outdoor street dining areas if certain requirements are met;  
36 defining terms; authorizing in-person or in-vehicle pick up of purchased food or meals and  
37 nonintoxicating beer or nonintoxicating craft beer orders-to-go; creating an unlicensed  
38 brewer or home brewer temporary special license for providing samples at licensed fairs  
39 and festivals, specifying requirements, setting a license fee and requiring a nonintoxicating  
40 beer or nonintoxicating craft beer transportation permit; reducing the fee for a  
41 nonintoxicating beer or nonintoxicating craft beer floorplan extension; permitting licensees  
42 to employ persons 16 years of age in sale and service of liquor, beer, and wine when  
43 supervised by an employee who is 21 years of age or older; establishing the Agriculture  
44 Development Fund to fund the hard cider development program created to foster the  
45 development and growth of the hard cider industry in this state; creating a private liquor  
46 delivery license for retail liquor outlets and third parties with sale and delivery  
47 requirements; establishing a private liquor bottle delivery permit; authorizing retail liquor  
48 outlets to sell sealed bottles of liquor through a window in a drive-up or drive-through;  
49 creating a private manufacturer club license for distilleries, mini-distilleries, micro-  
50 distilleries, wineries, and farm wineries, setting forth requirements, and providing for a  
51 license fee; authorizing distilleries, mini-distilleries, and micro-distilleries to also operate  
52 wineries, farm wineries, brewers, or resident brewers; authorizing wineries and farm

53 wineries to operate and be licensed as distilleries, mini-distilleries, micro-distilleries, to  
54 operate and be licensed as wineries, farm wineries, brewery, or as resident brewers;  
55 removing prohibition against a single person having more than one winery or farm winery  
56 license or both a winery and farm winery license; declaring that agricultural use  
57 designation is unchanged for building code and property tax classification upon opening  
58 any type of distillery or winery; establishing a private direct shippers license to allow  
59 distilleries, mini-distilleries and micro-distilleries to ship liquor in state and out of state;  
60 providing license requirements, shipping requirements, limitations, and fees; requiring  
61 direct shipping licensees shipping liquor in this state pay all taxes and fees and maintain  
62 certain records; authorizing the ability to pre-mix alcoholic liquors, establishing certain  
63 requirements, and creating a permit; creating a private direct shipper license, setting forth  
64 requirements and providing for a license fee; creating private caterer license, a private  
65 club bar license, a private club restaurant license, a private manufacturer club license, a  
66 private farmers market license, a private multi-sport complex license, a private tennis club  
67 license, a private professional sports stadium license, a private wedding venue or barn  
68 license, a one-day charitable rare, antique, or vintage liquor auction license for charitable  
69 purposes, and a private multi-vendor fair and festival license and setting forth  
70 requirements and providing for license fees; reducing license fees for two years due to  
71 COVID-19 pandemic; creating temporary private outdoor dining and temporary private  
72 outdoor street dining areas as legally demarcated areas that are not a public place where  
73 a private club licensee may sell and furnish alcoholic liquors; authorizing and creating craft  
74 cocktail growlers and setting forth requirements and limitations, and exempting certain  
75 licenses from a license fee; creating a private cocktail delivery license for licensed private  
76 club restaurants, private manufacturer clubs and third parties, setting forth requirements,  
77 including specific requirements for craft cocktail growlers, specifying limitations, and  
78 requiring a private craft cocktail delivery permit for delivery vehicles; authorizing in-person

79 or in-vehicle pick up of purchased food or a meal and craft cocktail growler orders-to-go;  
80 providing for wine definitions to clarify various aspects of wine, including the alcohol by  
81 volume percentage for table wine, wine, and fortified wine; removing restriction on number  
82 of one-day licenses which may be issued in a single year to a nonprofit to sell and serve  
83 wine for charitable purposes; requiring at least 80 percent of the net proceeds from a one  
84 day charitable auction be donated to the nonprofit; clarifying penalties for failure to meet  
85 wine licensure requirements; replacing wine bond requirements that secure the payment  
86 of taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are  
87 acting as either suppliers or distributors in a limited capacity, with an affidavit of  
88 compliance; providing penalties for failure to pay taxes and maintain good standing with  
89 the state; authorizing wineries and farm wineries to sell wine growlers and provide  
90 samples and establishing requirements and limitations; authorizing certain Class A and  
91 Class B licensees to sell sealed wine and wine growlers, and setting forth requirements  
92 and limitations; authorizing legislative rules; creating a private wine delivery license for  
93 Class A and Class B wine licensees and third parties, setting forth requirements and  
94 limitations, providing fees for certain licensees; creating a private wine retail transportation  
95 permit, setting forth requirements, and requiring no additional fee; creating private wine  
96 outdoor dining and private wine outdoor street dining areas as legally demarcated areas  
97 that are not a public place where wine may be sold and furnished; authorizing in-person  
98 or in-vehicle pick up of purchased food or a meal and wine orders-to-go; defining the term  
99 “hard cider”; providing that there is no separate license required to manufacture and sell  
100 hard cider under certain conditions; providing for a hard cider distributor’s license and its  
101 fee and permitting other current and valid licensees to distribute hard cider without an  
102 additional license fee; providing for hard cider exemptions to the wine liter tax; establishing  
103 a hard cider gallon tax; providing for the application of West Virginia Tax Procedures and  
104 Administration Act and West Virginia Tax Crimes and Penalties Act to the hard cider gallon

105 tax; providing for an internal effective date; providing for a tax credit against the hard cider  
106 tax; providing for applicability of other laws; requiring the filing of regular reports to the  
107 Tax Commissioner; providing for applications to import products necessary to  
108 manufacture hard cider under certain conditions; providing for hard cider sales for  
109 consumption on the licensed premises; providing for complimentary samples to be offered;  
110 establishing requirements for complimentary samples; permitting the sale of wine  
111 growlers; setting forth wine growler requirements, and providing a license fee; and  
112 providing additional exceptions to the criminal penalty for the unlawful admission of  
113 children to dance house for certain private clubs with approved age verifications systems.

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

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 6:00 a.m. on Sundays.**

1 The county commission of any county may conduct a county option election on the  
2 question of whether the sale or dispensing of nonintoxicating beer, wine, or alcoholic liquors in or  
3 on a licensed premises shall be allowed in the county beginning 1:00 p.m. on any Sunday, as  
4 provided in §11-16-18, §60-7-12, and §60-8-34 of this code, upon approval as provided in this  
5 section. The option election on this question may be placed on the ballot in each county at any  
6 primary or general election. The county commission of the county shall give notice to the public  
7 of the election by publication of the notice as a Class II-0 legal advertisement in compliance with  
8 the provisions of §59-3-1 *et seq.* of this code, and the publication area for publication shall be the  
9 county in which the election is to be held. The date of the last publication of the notice shall fall  
10 on a date within the period of the 14 consecutive days next preceding the election. On the local  
11 option election ballot shall be printed the following: "Shall the beginning hour at which

12 nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for licensed on-premises in  
13 \_\_\_\_\_ County on Sundays be changed from 6:00 a.m. to 1:00 p.m.”

14 If approved by the voters this would forbid private clubs and restaurants licensed to sell  
15 and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants,  
16 private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed  
17 Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until  
18 1:00 p.m.

19  Yes  No

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

21 The ballots shall be counted, returns made and canvassed as in general elections, and  
22 the results certified by the commissioners of election to the county commission. The county  
23 commission shall, without delay, certify the result of the election. Upon receipt of the results of  
24 the election, in the event a majority of the votes are marked “Yes”, all applicable licensees shall  
25 be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In  
26 the event a majority of the votes are marked “No”, all applicable licensees will continue to be  
27 required to comply with existing law.

## CHAPTER 11. TAXATION.

### ARTICLE 16. NONINTOXICATING BEER.

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

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

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

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

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

27 (d) *Sale Requirements.* -

28 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the  
29 purchase of prepared food or a meal and the completion of the sale may be accomplished by the

30 delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by  
31 the Class A retail dealer or third party licensee;

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

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

40 (4) An order, sale, or delivery consisting of multiple meals shall not amount to any  
41 combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating  
42 beer or nonintoxicating craft beer; and

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

54 (e) *Delivery Requirements.* -

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

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

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

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

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

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

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

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

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

82 (1) The delivery person may only permit the person who placed the order through a  
83 telephone, mobile ordering application, or web-based software to accept the prepared food or a  
84 meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age  
85 verification upon delivery with the delivery person's visual review and age verification and, as  
86 applicable, a stored scanned image of the purchasing person's legal identification;

87 (2) Any mobile ordering application or web-based software used shall create a stored  
88 record and image of the purchasing person's legal identification and details of the sale, accessible  
89 by the delivery person for verification, and shall include the delivery driver's name and vehicle  
90 information;

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

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

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

99 (g) *Retail Transportation Permit.* -

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

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

107 (h) *Enforcement.* -

108 (1) A Class A retail dealer or third party delivery licensee are responsible for any violations  
109 committed by their employees or independent contractors under this article, and more than one  
110 violation may be issued for a single violation involving multiple Class A retail dealers or licensees,  
111 employees, or independent contractors.

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

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

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

**§11-16-6e. License required for sale and shipment of nonintoxicating beer or  
nonintoxicating craft beer by a brewer or resident brewer; shipment of limited  
quantities of nonintoxicating beer or nonintoxicating craft beer; requirements;  
license fee; and penalties.**

1 (a) *Authorization.* - Notwithstanding the provisions of this article or any other law to the  
2 contrary, any person that is currently licensed and in good standing in its domicile state as a  
3 brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer,  
4 and who also obtains a nonintoxicating beer or nonintoxicating craft beer direct shipper's license  
5 from the commissioner, as provided in this article, may sell and ship nonintoxicating beer or

6 nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or  
7 nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or  
8 older, for personal use, and not for resale. A nonintoxicating beer or nonintoxicating craft beer  
9 direct shipper may ship nonintoxicating beer or nonintoxicating craft beer by mail to a purchasing  
10 person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating  
11 craft beer, subject to the requirements of this article, in and throughout West Virginia. A  
12 nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating  
13 beer or nonintoxicating craft beer out of this state by mail to a purchasing person who is 21 years  
14 of age or older subject to the recipient state's or country's requirements, laws, and international  
15 laws.

16 (b) *License requirements.* – Before sending any shipment of nonintoxicating beer or  
17 nonintoxicating craft beer to a purchasing person who is 21 years of age or older, the  
18 nonintoxicating beer or nonintoxicating craft beer direct shipper must first:

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

23 (2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee  
24 to ship and sell only nonintoxicating beer or nonintoxicating craft beer;

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

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

27 (5) Provide the commissioner a true copy of its current active license issued in the state  
28 of domicile, proving that the nonintoxicating beer or nonintoxicating craft beer direct shipper is  
29 licensed in its state of domicile as a brewer, resident brewer, or other nonintoxicating beer or  
30 nonintoxicating craft beer manufacturer;

31 (6) Obtain from the commissioner a nonintoxicating beer or nonintoxicating craft beer  
32 direct shipper's license;

33 (7) Submit to the commissioner a list of all brands and labels of nonintoxicating beer or  
34 nonintoxicating craft beer to be shipped to West Virginia and attest that all nonintoxicating beer  
35 or nonintoxicating craft beer brands and labels are manufactured by the brewer, resident brewer  
36 or other nonintoxicating beer or nonintoxicating craft beer manufacturer seeking licensure and are  
37 not counterfeit or adulterated nonintoxicating beer or nonintoxicating craft beer;

38 (8) Attest that the brewer, resident, brewer or other nonintoxicating beer or nonintoxicating  
39 craft beer manufacturer brews less than 25,000 barrels of beer per calendar year and provide  
40 documentary evidence along with the attestation.

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

43 (c) *Shipping Requirements.* - All nonintoxicating beer or nonintoxicating craft beer direct  
44 shipper licensees shall:

45 (1) Not ship more than a maximum of two, 24 bottle or can, cases of nonintoxicating beer  
46 or nonintoxicating craft beer based on a 12-fluid ounce bottle or can, however no combination of  
47 bottles or cans may exceed a total for the two cases of 576 fluid ounces of nonintoxicating beer  
48 residing in West Virginia, for such person's personal use and consumption, and not for resale.

49 (2) Not ship to any licensed brewers, resident brewers, retailers, retail liquor outlets, any  
50 type of private club, private caterers, private wine restaurants, private wine spas, private wine bed  
51 and breakfasts, wine retailers, wine specialty shops, taverns, or other licensees licensed under  
52 this article or chapter 60 of this code;

53 (3) Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped  
54 directly to a purchasing person who is 21 years of age or older are clearly and conspicuously  
55 labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER  
56 REQUIRED FOR DELIVERY";

57 (4) Not ship nonintoxicating beer or nonintoxicating craft beer that has not been registered  
58 with the commissioner, register and pay any registration fees, and prove by documentation that  
59 the direct shipper has the rights from the manufacturer to ship the nonintoxicating beer or  
60 nonintoxicating craft beer;

61 (6) Not ship or deliver to:

62 (A) Any person under the age of 21;

63 (B) To an intoxicated person; or

64 (C) To a person physically incapacitated due to the consumption of nonintoxicating beer  
65 or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

66 (7) Obtain a written or electronic signature upon delivery to a person who the  
67 nonintoxicating beer or nonintoxicating craft beer direct shipper's carrier verifies in-person is at  
68 least 21 years of age or older, and if the carrier is not able to verify the age of the person and  
69 obtain that person's signature, then the carrier may not complete the delivery of the  
70 nonintoxicating beer or nonintoxicating craft beer shipment;

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

73 (9) First deliver any nonintoxicating beer or nonintoxicating craft beer shipment being  
74 shipped in and throughout West Virginia to the nonintoxicating beer or nonintoxicating craft beer  
75 brand's nearest appointed distributor who has the nonintoxicating beer or nonintoxicating craft  
76 beer brand's franchise territory located in the purchasing person's county of residence in West  
77 Virginia: *Provided*, That, if no distributor has been appointed for the nonintoxicating beer or  
78 nonintoxicating craft beer brand, then the brewer of the brand shall appoint a franchise distributor  
79 in the franchise territory where the purchasing person of the nonintoxicating beer or  
80 nonintoxicating craft beer resides;

81 (10) Have the appointed distributor complete any nonintoxicating beer or nonintoxicating  
82 craft beer shipment order with an in-person pickup, at the location of appointed distributor's

83 distributorship, to the purchasing person subject to age and identity verification by the appointed  
84 distributor; *Provided*, That, the appointed distributor is not a retailer, and therefore cannot charge  
85 an additional fee for the in-person pickup for the nonintoxicating beer or nonintoxicating craft beer  
86 shipment as this would be considered a part of the service provided under the appointed  
87 distributor's franchise agreement.

88 (d) *Payment of Fees and Taxes.*

89 (1) Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must  
90 meet the markup requirements for retail sales set forth in §47-11A-6 of the code.

91 (2) Further, the nonintoxicating beer or nonintoxicating craft beer direct shipper licensee  
92 shall collect and remit all beer barrel tax, state sales tax, and local sales tax on the sale of  
93 nonintoxicating beer or nonintoxicating craft beer to the Tax Commissioner at the close of each  
94 month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes  
95 paid for all sales and shipments to persons residing in West Virginia. No nonintoxicating beer or  
96 nonintoxicating craft beer direct shipper shall pay any beer barrel or sales tax more than once.

97 (3) File monthly returns to the commissioner showing the total of nonintoxicating beer or  
98 nonintoxicating craft beer, by type, brand, sold, and shipped into West Virginia for the preceding  
99 month;

100 (4) Permit the Tax Commissioner or commissioner or their designees to perform an audit  
101 of the nonintoxicating beer or nonintoxicating craft beer direct shipper's records upon request;

102 (5) The payment of fees to the commissioner and taxes to the Tax Commissioner may be  
103 in addition to fees and taxes levied by the nonintoxicating beer or nonintoxicating craft beer direct  
104 shipper's domicile state.

105 (6) No nonintoxicating beer or nonintoxicating craft beer direct shipper will be required to  
106 pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

107 (e) *Jurisdiction.* - By obtaining a nonintoxicating beer or nonintoxicating craft beer direct  
108 shipper licensee the licensee shall be considered to have agreed and consented to the jurisdiction

109 of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court,  
110 concerning enforcement of this chapter and any other related laws or rules.

111 (f) *Records and reports.* –

112 (1) Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must  
113 maintain accurate records of all shipments sent to West Virginia.

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

116 (g) The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually  
117 renew its license with the commissioner by application, paying the nonintoxicating beer or  
118 nonintoxicating craft beer direct shipper license fee and providing the commissioner with a true  
119 copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft  
120 beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct  
121 shipper's domicile state.

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

123 (i) *Penalties.* –

124 (1) The commissioner may enforce the requirements of this chapter by administrative  
125 proceedings as set forth in §11-16-23 and §11-16-24 of this code to suspend or revoke a  
126 nonintoxicating beer or nonintoxicating craft beer direct shipper's license, and the commissioner  
127 may accept payment of a penalties as set forth in §11-16-23 and §11-16-24 of this code or an  
128 offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals  
129 on such notices may be had in the same manner as in the case of revocations of licenses set  
130 forth in §11-16-23 and §11-16-24a of this code.

131 (2) If any licensee violates the provisions of this article, the commissioner may determine  
132 to suspend the privileges of the brewer, resident brewer, or other nonintoxicating beer or  
133 nonintoxicating craft beer manufacturer to sell, ship, or deliver nonintoxicating beer or  
134 nonintoxicating craft beer to a purchasing person who is 21 years of age or older or to the

135 commissioner, or otherwise engage in the liquor business in this state for a period of one year  
136 from the date a notice is mailed to such person by the commissioner of the fact that such person  
137 has violated the provisions of this article. During such one-year period, it shall be unlawful for any  
138 person within this state to knowingly buy or receive nonintoxicating beer or nonintoxicating craft  
139 beer from such licensee or to have any dealings with such licensee with respect thereto.

140 (k) *Criminal Penalties.* – A shipment of nonintoxicating beer or nonintoxicating craft beer  
141 directly to citizens in West Virginia from persons who do not possess a valid nonintoxicating beer  
142 or nonintoxicating craft beer direct shipper’s license is prohibited. Any person who knowingly  
143 makes, participates in, transports, imports, or receives such an unlicensed and unauthorized  
144 direct shipment of nonintoxicating beer or nonintoxicating craft beer is guilty of a felony and, shall,  
145 upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation. Without  
146 limitation on any punishment or remedy, criminal or civil, any person who knowingly makes,  
147 participates in, transports, imports, or receives such a direct shipment constitutes an act that is  
148 an unfair trade practice.

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

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

10 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery  
11 process shall meet the requirements of this section. The order, sale, and delivery process is  
12 subject to the penalties of this article.

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

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

27 (d) *Sale Requirements.* -

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

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

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

37 (4) An order, sale, or delivery consisting of food and any combination of sealed  
38 nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess  
39 of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

40 (5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail  
41 dealer, as set forth in this article. A third party delivery licensee may only charge a convenience  
42 fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party  
43 licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer  
44 or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly  
45 related to food. The convenience fee charged by the third party delivery licensee to the purchasing  
46 person may not be greater than five dollars per delivery order. For any third party licensee also  
47 licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any  
48 order, sale, and delivery of sealed wine may not exceed five dollars.

49 (e) *Delivery Requirements.* -

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

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

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

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

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

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

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

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

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

74 (1) The delivery person may only permit the person who placed the order through a  
75 telephone, mobile ordering application, or web-based software to accept the food and  
76 nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age  
77 verification upon delivery with the delivery person's visual review and age verification and, as  
78 applicable, requires a stored scanned image of the purchasing person's legal identification;

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

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

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

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

91 (g) *Retail Transportation Permit.* -

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

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

98 (h) *Enforcement.* -

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

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

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

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

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

1           (a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of  
2 nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active  
3 license as required by this article. The license period begins on July 1 of each year and ends on  
4 June 30 of the following year. If the license is granted for a shorter period, then the license fee  
5 shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That  
6 if a licensee fails to complete a renewal application and make payment of its annual license fee  
7 in renewing its license on or before June 30 of any subsequent year, then an additional \$150  
8 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or  
9 refunded, prior to the processing of any renewal application and applicable full year annual license  
10 fee; and furthermore a licensee who continues to operate after the expiration of its license is  
11 subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined  
12 by the commissioner.

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

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

15           (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the  
16 license fee for social, fraternal, or private clubs not operating for profit, and which have been in  
17 continuous operation for two years or more immediately preceding the date of application, is \$150:  
18 *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment  
19 of an annual license tax of \$10 for each dining, club, or buffet car in which the beer is dispensed.

20           Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to  
21 sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All  
22 other Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as  
23 licensed, for consumption on the licensed premises or off the licensed premises. Class A  
24 licensees may sell nonintoxicating beer or nonintoxicating craft beer for consumption off the

25 licensed premises when it is in a sealed original container and sold for personal use, and not for  
26 resale. Class A licensees shall provide prepared food or meals along with sealed nonintoxicating  
27 beer or nonintoxicating craft beer in the original container or in a sealed growler as set forth for  
28 sales and service in §11-16-6d of this code, to a purchasing person who is in-person or in-vehicle  
29 picking up prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer  
30 orders-to-go, subject to verification that the purchasing person is 21 years of age or older, and  
31 not visibly or noticeably intoxicated, and as otherwise specified in this article.

32 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and  
33 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to  
34 sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for  
35 consumption off the licensed premises. A Class B retailer may sell to a purchasing person, for  
36 personal use, and not for resale, quantities of draught beer in original containers that are no larger  
37 in size than one-half barrel for off-premises consumption.

38 The Commissioner may only issue a Class B license to the proprietor or owner of a  
39 grocery store. For the purpose of this article, the term “grocery store” means any retail  
40 establishment commonly known as a grocery store or delicatessen, and caterer or party supply  
41 store, where food or food products are sold for consumption off the premises, and includes a  
42 separate and segregated portion of any other retail store which is dedicated solely to the sale of  
43 food, food products, and supplies for the table for consumption off the premises. Caterers or party  
44 supply stores shall purchase the appropriate licenses from the Alcohol Beverage Control  
45 Administration.

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

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

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

54 (A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating  
55 craft beer, the license fee is \$500 for each place of manufacture;

56 (B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating  
57 beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

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

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

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

69 (c) As part of the application or renewal application and in order to determine a brewer or  
70 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide  
71 the commissioner, on a form provided by the commissioner, with an estimate of the number of  
72 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it may produce during the  
73 year based upon the production capacity of the brewer's or resident brewer's manufacturing  
74 facilities and the prior year's production and sales volume of nonintoxicating beer or  
75 nonintoxicating craft beer.

76 (d) On or before July 15 of each year, every brewer, or resident brewer who is granted a  
77 license shall file a final report, on a form provided by the commissioner, that is dated as of June  
78 30 of that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in  
79 barrels and gallons produced at its principal place of business and manufacture during the prior  
80 year.

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

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

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

94 (h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good  
95 standing with the commissioner, may apply, on a form provided by the commissioner, to sell,  
96 serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption  
97 in an outdoor dining area or outdoor street dining area, as authorized by any municipal  
98 government or county commission in the which the licensee operates. The Class A retail dealer  
99 shall submit to the municipal government or county commission, for approval, a revised floorplan  
100 and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the  
101 commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or

102 private outdoor dining, the approved and bounded outdoor area need not be adjacent to the  
103 licensee’s licensed premises, but in close proximity and under the licensee’s control with right of  
104 ingress and egress. For purposes of this section, “close proximity” means an available area within  
105 150 feet of the Class A retail dealer’s licensed premises. A Class A retail dealer may operate a  
106 nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in  
107 conjunction with a temporary private outdoor dining or temporary private outdoor street dining  
108 area set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary  
109 private wine outdoor street dining set forth in §60-8-32a of this code.

110 (i) For purposes of this article, “nonintoxicating beer or nonintoxicating craft beer outdoor  
111 dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining” includes dining  
112 areas that are:

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

115 (2) Open to the air; and

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

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

**§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.**

1 (a) An unlicensed brewer or home brewer may obtain a temporary special license, upon  
2 meeting the requirements set forth in this section, to offer its nonintoxicating beer or  
3 nonintoxicating craft beer for sampling and sales at a fair and festival licensed under §11-16-11  
4 and §11-16-11b of this code, when granted approval by the fair and festival licensee. The  
5 unlicensed brewer or home brewer is exempt from the requirements of registering the brand and  
6 using a distributor and a franchise agreement due to the limited nature of this temporary license.

7 (b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements,  
8 restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule  
9 or order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or  
10 orders as required by the circumstances of each festival or fair. The commissioner may revoke or  
11 suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding  
12 the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no  
13 circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this  
14 code, be waived nor shall any exception be granted with respect to those provisions.

15 (c) A brewer or home brewer, regardless of its designation in its domicile state, that is  
16 duly licensed and in good standing in its domicile state, but unlicensed in this state, or an  
17 unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a \$150  
18 nonrefundable and non-prorated fee and submit an application for a temporary license on a one-  
19 day basis. The temporary special license allows the unlicensed brewer or home brewer to sell  
20 nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and  
21 sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the  
22 licensed fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate  
23 markup on the nonintoxicating beer or nonintoxicating craft beer.

24 (2) The unlicensed brewer or home brewer temporary license application shall include, but  
25 is not limited to, the person or entity's name, address, taxpayer identification number, and  
26 location; if the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its  
27 domicile state; a signed and notarized verification that it produces 25,000 barrels or less of  
28 nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that  
29 it is in good standing with its domicile state; copies of its federal certificate of label approvals and  
30 a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to  
31 sell to a fair or festival licensed under §11-16-11 and §11-16-11b of this code; and any other  
32 information required by the commissioner.

33           (3) The applicant shall include in its application a list of all nonintoxicating beers or  
34 nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival  
35 for sampling or sale so that the commissioner may review them in the interest of public health and  
36 safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list  
37 creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to  
38 two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional  
39 fee.

40           (4) An applicant that receives this temporary license for any event licensed under §11-16-  
41 11 and §11-16-11b of this code shall provide a signed and notarized agreement acknowledging  
42 that it is the applicant's duty to pay all municipal, local, and sales taxes applicable to the sale of  
43 nonintoxicating beer or nonintoxicating craft beer in West Virginia.

44           (5) The unlicensed brewer or home brewer shall submit an application for each temporary  
45 special license sought for an event licensed under §11-16-11 and §11-16-11b of this code, at  
46 which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for  
47 sampling or sale. The license fee covers up to two separate one-day licenses for the event before  
48 an additional fee is required. Any applicant desiring to attend more than four events per year or  
49 otherwise operate in West Virginia shall seek appropriate licensure as a brewery or resident  
50 brewery in this state.

51           (6) Notwithstanding the provisions of this article and requirements for licensure, brand  
52 registration, franchise requirements, payment of beer barrel tax, and the appointment of a  
53 distributor franchise network, this temporary special license for an event licensed under §11-16-  
54 11 and §11-16-11b of this code, once granted, permits the licensee to operate in this limited  
55 capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this  
56 code, subject to the limitations noted in this section.

57           (7) The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating  
58 craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating

59 craft beer in the state as required by §11-16-10(f) of this code: *Provided*, That the commissioner  
60 may not charge or collect an additional fee for a nonintoxicating beer or nonintoxicating craft beer  
61 transportation permit to an applicant seeking a temporary special license under this section.

62 (8) The licensee is subject to all applicable violations and/or penalties under this article  
63 and related legislative rules that are not otherwise excepted by this section: *Provided*, That the  
64 commissioner may by rule or order provide for certain waivers or exceptions with respect to the  
65 provisions of this code, rules, or orders required by the circumstances of each festival or fair. The  
66 commissioner may revoke or suspend any license issued pursuant to this section prior to any  
67 notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code:  
68 *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-  
69 8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect  
70 to those provisions.

**§11-16-18. Unlawful acts of licensees; criminal penalties.**

1 (a) It is unlawful:

2 (1) Except as provided for in §7-1-3ss and this chapter of this code, any licensee, his, her,  
3 its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or  
4 consume, in or on any licensed premises or in any rooms directly connected thereto,  
5 nonintoxicating beer between the hours of 2:00 a.m. and 6:00 a.m., or a Class A retail dealer to  
6 sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and  
7 6:00 a.m;

8 (2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish,  
9 or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably  
10 intoxicated or to any person known to be insane or known to be a habitual drunkard;

11 (3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish,  
12 or give any nonintoxicating beer as defined in this article to any person who is less than 21 years  
13 of age;

14           (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any  
15 nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist  
16 to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing  
17 contained in this section prohibits a licensee from crediting to a purchasing person the actual price  
18 charged for packages or containers returned by the original purchasing person as a credit on any  
19 sale, or from refunding to any purchasing person the amount paid or deposited for the containers  
20 when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer  
21 of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount  
22 for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer  
23 and the distributor shall initiate the transfer no later than noon of one business day after the  
24 delivery;

25           (5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs,  
26 supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee  
27 engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or  
28 other similar inducement, except advertising matter, including indoor electronic or mechanical  
29 signs, of nominal value up to \$25.00 per stock keeping unit, to either trade or consumer buyers:  
30 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*,  
31 That, in the interest of public health and safety, a distributor may, independently or through a  
32 subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and  
33 cleaning services to a licensed retailer so long as the furnishing or sale of draught line services  
34 may be negotiated at no less than actual cost: *Provided further*, That a distributor may furnish,  
35 rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a  
36 subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail  
37 under the conditions and within the limitations as prescribed in this section. Nothing contained in  
38 this section prohibits a brewer from sponsoring any professional or amateur athletic event or from  
39 providing prizes or awards for participants and winners in any events.

40 (6) For any brewer or distributor to sponsor any professional or amateur athletic event or  
41 provide prizes or awards for participants and winners when a majority of the athletes participating  
42 in the event are minors, unless the event is specifically authorized by the commissioner;

43 (7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines  
44 where the draught lines have not been cleaned at least every two weeks in accordance with rules  
45 promulgated by the commissioner, and where written records of all cleanings are not maintained  
46 and available for inspection;

47 (8) For any licensee to permit in his or her premises any lewd, immoral, or improper  
48 entertainment, conduct, or practice;

49 (9) For any licensee, except the holder of a license to operate a private club issued under  
50 the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant  
51 issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax  
52 receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic  
53 drinks other than nonintoxicating beer;

54 (10) For any licensee to obstruct the view of the interior of his or her premises by  
55 enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying  
56 the premises. The interior of all licensed premises shall be adequately lighted at all times:  
57 *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer,  
58 the premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the  
59 premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

60 (11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in  
61 the sale, possession, or consumption of any alcoholic liquors on the premises covered by a  
62 license or on premises directly or indirectly used in connection with it: *Provided*, That the  
63 prohibition contained in this subdivision with respect to the selling or possessing or to the  
64 acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with  
65 respect to the holder of a license to operate a private club issued under the provisions of §60-7-

66 1 *et seq.* of this code, nor shall the prohibition be applicable to a private wine restaurant licensed  
67 under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is  
68 authorized to serve wine;

69 (12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this  
70 article, purchased or acquired from any source other than a distributor, brewer, or manufacturer  
71 licensed under the laws of this state;

72 (13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon  
73 his or her premises or to permit the use of loud musical instruments if either or any of the same  
74 may disturb the peace and quietude of the community where the business is located: *Provided,*  
75 That a licensee may have speaker systems for outside broadcasting as long as the noise levels  
76 do not create a public nuisance or violate local noise ordinances;

77 (14) For any person whose license has been revoked, as provided in this article, to obtain  
78 employment with any retailer within the period of one year from the date of the revocation, or for  
79 any retailer to knowingly employ that person within the specified time;

80 (15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating  
81 beer except in the original container;

82 (16) For any licensee to knowingly permit any act to be done upon the licensed premises,  
83 the commission of which constitutes a crime under the laws of this state;

84 (17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his  
85 or her licensed premises;

86 (18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for  
87 any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any  
88 person less than 18 years of age to loiter in or upon any licensed premises; except, however, that  
89 the provisions of this subdivision do not apply where a person under the age of 18 years is in or  
90 upon the premises in the immediate company of a parent or legal guardian, or where and while a  
91 person under the age of 18 years is in or upon the premises for the purpose of and actually making

92 a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving  
93 any lawful service rendered in the licensed premises, including the consumption of any item of  
94 food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

95 (19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer  
96 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating  
97 beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose  
98 principal place of business or licensed premises is within the assigned territory of another  
99 distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to  
100 prohibit sales of convenience between distributors licensed in this state where one distributor  
101 sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale;  
102 and

103 (20) For any licensee or any agent, servant, or employee of any licensee to knowingly  
104 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of  
105 chapter 29A of this code.

106 (b) Any person who violates any provision of this article, including, but not limited to, any  
107 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who  
108 makes any false statement concerning any material fact in submitting an application for a license  
109 or for a renewal of a license or in any hearing concerning the revocation of a license, or who  
110 commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and,  
111 upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor  
112 more than \$500, or confined in the county or regional jail for not less than 30 days nor more than  
113 six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the  
114 circuit court and any other courts having criminal jurisdiction in their county for the trial of all  
115 misdemeanors arising under this article.

116 (c) (1) A Class B licensee that:

117 (A) Has installed a transaction scan device on its licensed premises; and

118 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of  
119 any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or  
120 given away by the use of the transaction device is not subject to: (i) Any criminal penalties  
121 whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative  
122 penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale,  
123 furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual  
124 who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent,  
125 servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to  
126 an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this  
127 section. Any agent, servant, or employee who has improperly sold, furnished, or given away  
128 nonintoxicating beer to an individual less than 21 years of age is subject to termination from  
129 employment, and the employer shall have no civil liability for the termination.

130 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each  
131 employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is  
132 sold by providing evidence: (A) That it has developed a written policy which requires each  
133 employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will  
134 be sold, furnished, or given away; (B) that it has communicated this policy to each employee,  
135 servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents  
136 regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken  
137 corrective action for any discovered noncompliance with this policy.

138 (3) "Transaction scan" means the process by which a person checks, by means of a  
139 transaction scan device, the age and identity of the cardholder, and "transaction scan device"  
140 means any commercial device or combination of devices used at a point of sale that is capable  
141 of deciphering in an electronically readable format the information enclosed on the magnetic strip  
142 or bar code of a driver's license or other governmental identity card.

143 (d) Nothing in this article nor any rule of the commissioner shall prevent or be considered  
144 to prohibit any licensee from employing any person who is at least 18 years of age to serve in the  
145 licensee's lawful employ, including the sale or distribution of nonintoxicating beer as defined in  
146 this article. With the prior approval of the commissioner, a licensee whose principal business is  
147 the sale of food or consumer goods, or the providing of recreational activities, including, but not  
148 limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug  
149 stores, discount stores, grocery stores, and convenience stores, may employ persons who are  
150 less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties may  
151 include the sale of nonintoxicating beer or alcoholic liquors only when directly supervised by a  
152 person 21 years of age or older: *Provided, however*, That the authorization to employ persons  
153 under the age of 18 years shall be clearly indicated on the licensee's license.

## **CHAPTER 19. AGRICULTURE.**

### **ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.**

#### **§19-2-12. Agriculture Development Fund; administration; purpose; funding.**

1 (a) There is hereby created in the State Treasury a special revenue account to be known  
2 as the Agriculture Development Fund. The fund shall be administered by the Department of  
3 Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of  
4 this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;  
5 any moneys appropriated and designated for the fund by the Legislature; any moneys able to be  
6 transferred into the fund by authority of the commissioner from other funds; and gifts, donations,  
7 and interest or other returns earned from investment of the fund.

8 (b) Expenditures from the fund shall be for the purpose of fostering and supporting the  
9 development of agricultural sectors, such as hard cider, within the state, and are not authorized  
10 from collections, but are to be made only in accordance with appropriation by the Legislature and  
11 in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the

12 provisions set forth in §11B-2-1 *et seq.* of this code. Any balance, including accrued interest and  
13 other returns, remaining in the fund at the end of each fiscal year shall not revert to the General  
14 Revenue Fund, but shall remain in the fund and be expended as provided by this section.

**§19-2-13. Hard cider development program; purpose; funding.**

1 The commissioner shall establish a program to foster the development and growth of the  
2 hard cider industry in the state. The purpose of the program shall be to assist in the development  
3 of fruit inputs necessary for the production of hard cider in the state. The program shall be funded  
4 using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12  
5 of this code.

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

**ARTICLE 1. GENERAL PROVISIONS.**

**§60-1-5a. Farm wineries defined.**

1 (a) For the purpose of this chapter “Farm winery” means an establishment where in any  
2 year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are  
3 manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other  
4 fruits or honey, or other agricultural products containing sugar and where port, sherry, and  
5 Madeira wine may also be manufactured, with 25 percent of such raw products being produced  
6 by the owner of the farm winery on the premises of that establishment and no more than 25  
7 percent of such produce originating from any source outside this state. Any port, sherry, or  
8 Madeira wine manufactured by a winery or a farm winery shall not exceed an alcoholic content of  
9 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

10 (b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may  
11 include one off-farm location. The owner of a farm winery may provide to the commissioner  
12 evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in  
13 support thereof, that the owner has planted on the premises of the farm winery young nonbearing

14 fruit plants. The commissioner may grant permission for one off-farm location when the location  
15 produces in an amount equal to that reasonably expected to be produced when the nonbearing  
16 fruit plants planted on the farm winery come into full production. The length of time of the  
17 permission to use an off-farm location shall be determined by the commissioner after consultation  
18 with the Agriculture Commissioner.

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

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

1 (a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may  
2 apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor  
3 bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or  
4 cans in the original container is permitted for off-premises consumption when completed by the  
5 licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile  
6 ordering application, or a web-based software program, authorized by the licensee's license.  
7 There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license.  
8 The order, sale, and delivery process shall meet the requirements of this section. The order, sale,  
9 and delivery process is subject to the penalties of this article.

10 (b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor  
11 delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a  
12 licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for  
13 off-premises consumption by a third party licensee when a retail liquor outlet sells to a person  
14 purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering  
15 application, or a web-based software program. The private liquor delivery license non-prorated,

16 nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and  
17 vehicles.

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

20 (d) *Sale Requirements.* -

21 (1) The purchase of sealed liquor bottles or cans in the original container may accompany  
22 the purchase of food and the completion of the sale may be accomplished by the delivery of food  
23 and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

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

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

30 (4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles  
31 for each order: *Provided*, That the entire delivery order may not contain any combination of sealed  
32 liquor bottles or cans in the original container, where the combination is more than 128 fluid  
33 ounces of liquor total; and

34 (5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet,  
35 as set forth in this article. A third party private liquor delivery licensee may only charge a  
36 convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee  
37 may not collect a percentage of the liquor delivery order, but may continue to collect a percentage  
38 of the delivery order directly related to food. The convenience fee charged by the third-party  
39 private liquor delivery licensee to the purchasing person shall be no greater than five dollars per  
40 delivery order where a sealed liquor bottle or can in the original container is ordered by the  
41 purchasing person. For any third party licensee also licensed for other nonintoxicating beer or

42 nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery  
43 pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to  
44 §60-7-1 *et seq.* of this code, the total convenience fee of any order, sale, and delivery of sealed  
45 alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed five dollars.

46 (e) *Private Liquor Delivery Requirements.* -

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

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

55 (3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private  
56 liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original  
57 container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain  
58 an electronic copy of his or her permit as proof of licensure;

59 (4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and  
60 a sealed liquor bottle or can order in the original container in the market zone or contiguous market  
61 zone where the licensed retail liquor outlet is located;

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

66 (6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food  
67 and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-  
68 1 *et seq.* of this code, and under this chapter;

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

71 (8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and  
72 leave food and a sealed liquor bottle or can in the original container at any address without  
73 verifying a person's age and identification as required by this section.

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

75 (1) The delivery person shall only permit the person who placed the order through a  
76 telephone order, a mobile ordering applicant, or web-based software to accept the food and a  
77 sealed liquor bottle or can in the original container for delivery which is subject to verification upon  
78 delivery with the delivery person's visual review and verification and, as applicable, a stored  
79 scanned image of the purchasing person's legal identification;

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

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

87 (4) All records are subject to inspection by the commissioner. A retail liquor outlet or third  
88 party private liquor delivery licensee shall retain records for three years, and shall not  
89 unreasonably withhold the records from the commissioner's inspection; and

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

93 (g) *Private Liquor Bottle Delivery Permit.* -

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

96 (2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and  
97 driver information, requested by the commissioner. Upon any change in vehicles or drivers, the  
98 licensee shall update the driver and vehicle information with the commissioner within 10 days of  
99 the change.

100 (3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery  
101 permit shall meet the requirements of a transportation permit authorizing the permit holder to  
102 transport liquor subject to the requirements of this chapter.

103 (h) *Enforcement.* -

104 (1) The retail liquor outlet or the licensed third party are responsible for any violations  
105 committed by their employees or independent contractors under this article, and more than one  
106 violation may be issued for a single violation involving multiple licensees, employees, or  
107 independent contractors.

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

111 (3) It is a violation for any licensee, its employees, or independent contractors to break  
112 the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject  
113 to the maximum penalties available in this chapter.

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

116 (i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in  
117 the original container may provide for the sale and curbside in-person or in-vehicle pick-up of  
118 sealed liquor bottles or cans in the original container, subject to verification that the purchasing  
119 person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise  
120 specified in this article.

121 (j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in  
122 the original container may provide for the sale and delivery through a drive up or drive through  
123 structure, approved by the commissioner, of sealed liquor bottles or cans in the original container,  
124 subject to verification that the purchasing person is 21 years of age or older, and not visibly, or  
125 noticeably intoxicated, and as otherwise specified in this article.

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

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

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

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

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

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

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

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

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

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

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

18           (b) Any person who violates any provision of this article, except section 24 of this article,  
19 including, but not limited to, any provision of this section, or any rule promulgated by the board or  
20 the commissioner, or who makes any false statement concerning any material fact, or who omits  
21 any material fact with intent to deceive, in submitting an application for a retail license or for a  
22 renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or  
23 who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor  
24 and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than  
25 \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both  
26 fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses  
27 under this article.

28           (c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits  
29 any retail licensee from employing any person who is at least 18 years of age to serve in any retail  
30 licensee's lawful employment at any retail outlet operated by the retail licensee, or from having  
31 the person sell liquor or transport liquor on behalf of a manufacturer under the provisions of this  
32 article. With the prior approval of the commissioner, a retail licensee may employ persons at any  
33 retail outlet operated by a retail licensee who are less than 18 years of age but at least 16 years  
34 of age, the persons' duties may include the sale of liquor only when directly supervised by a  
35 person 21 years of age or older: *Provided*, That the authorization to employ the persons under  
36 the age of 18 years shall be clearly indicated on the retail licensee's license *Provided, however*,  
37 That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be  
38 considered to prohibit any licensee from employing any person who is at least 21 years of age for  
39 the ordering and delivery of liquor when licensed for liquor ordering and delivery under the  
40 provisions of this chapter.

**ARTICLE 4. LICENSES.**

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

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

14           (b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or  
15 micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16,  
16 §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-  
17 26 of this code, and the provisions of §60-3-1 *et seq.* and §60-4-1 *et seq.*, of this code, applicable  
18 to liquor retailers and distillers.

19           (c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay  
20 all taxes and fees required of licensed retailers and meet applicable licensing provisions as  
21 required by this chapter and by rule of the commissioner, except for payments of the wholesale  
22 markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all  
23 liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises  
24 consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment

25 fee to be paid to the commissioner: *Provided, however,* That liquor sold by the distillery, mini-  
26 distillery, or micro-distillery shall not be priced less than the price set by the commissioner  
27 pursuant §60-3A-17 of this code.

28 (d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery  
29 shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for  
30 the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection  
31 shall be distributed by the commissioner, at least quarterly, to each market zone retailer located  
32 in the distillery, mini-distillery, or micro-distillery’s market zone, proportionate to each market zone  
33 retailer’s annual gross prior years pretax value sales. The maximum amount of market zone  
34 payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is  
35 \$15,000 per annum.

36 (e) *Limitations on licensees.* —A distillery, mini-distillery, or micro-distillery may not sell  
37 more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during  
38 the initial 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may  
39 increase sales at the distillery, mini-distillery, micro-distillery location by 2,000 gallons following  
40 the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or  
41 micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000  
42 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed  
43 mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery  
44 location. A licensed micro-distillery may not produce more than 10,000 gallons per calendar year  
45 at the micro-distillery location. The commissioner may issue more than one distillery or mini-  
46 distillery license to a single person or entity and a person may hold both a distillery and a mini-  
47 distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate  
48 a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

49 (f) *Building code and tax classification-* Notwithstanding any provision of this code to the  
50 contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this

51 article on a property does not change the nature or use of the property which otherwise qualifies  
52 as agricultural use for building code and property tax classification purposes.

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

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

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

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

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

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

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

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

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

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

40 (4) No liter tax shall be collected on wine sold in the original sealed package for the  
41 purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the  
42 liter tax.

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

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

47 (i) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer,  
48 and direct shipper licenses when acting in one or more of those capacities and shall pay all

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

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

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

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

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

1 (a) *Authorization.* - Except for the commissioner, no person may offer for sale liquor, sell  
2 liquor, or offer liquor for shipment in this state, except for a licensed private direct shipper. A  
3 distillery, mini-distillery, or micro-distillery, whose licensed premises is located in this state or  
4 whose licensed premises is located and licensed out of this state, who desires to engage in the  
5 sale and shipment of liquor produced by the distillery, mini-distillery, or micro-distillery on its

6 licensed premises, shall ship directly from the licensee’s primary place of distilling by mail, using  
7 a mail shipping carrier to a purchasing person who is 21 years of age or older, for personal use,  
8 and not for resale under this article. The distillery, mini-distillery, or micro distillery shall obtain a  
9 private direct shipper license. Shipments to a purchasing person shall only be to a retail liquor  
10 outlet in the market zone in which the purchasing person resides. A private direct shipper may  
11 ship liquor subject to the requirements in this chapter in and throughout West Virginia, except for  
12 those local option areas designated as “dry” areas under §60-5-1 *et seq.* of this code. A private  
13 direct shipper may also sell, and ship liquor out of this state directly from its primary place of  
14 distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or  
15 older subject to the recipient state’s or country’s requirements, laws, and international laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (4) Not ship liquor from overseas or internationally;

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

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

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

55 (d) *Payment of Fees and Taxes.*

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

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

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

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

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

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

76 (f) *Records and reports.* -

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

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

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

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

86 (i) *Penalties.* –

87 (1) The commissioner may enforce the requirements of this chapter by administrative  
88 proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private  
89 direct shipper's license or retail liquor outlet's license, and the commissioner may accept payment  
90 of a penalties as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in  
91 lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may  
92 be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and  
93 §60-7-13a of this code.

94 (2) If any such distillery violates the provisions of this chapter, the commissioner may  
95 determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to a purchasing  
96 person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor  
97 business in this state for a period of one year from the date a notice is mailed to such person by  
98 the commissioner of the fact that such person has violated the provisions of this article. During  
99 such one-year period, it shall be unlawful for any person within this state to buy or receive liquor  
100 from such person or to have any dealings with such person with respect thereto.

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

106 criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives  
107 such a direct shipment constitutes an act that is an unfair trade practice.

**ARTICLE 6. MISCELLANEOUS PROVISIONS.**

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

1 A licensed person shall not:

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

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

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

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

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

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

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

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

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

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

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

31           and

32           (C) The licensee shall maintain a written record reflecting the cleaning and sanitizing of  
33 the storage and dispensing equipment for inspection by the commissioner and health inspectors;

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

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

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

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

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

48 provision of this section for the second or any subsequent offense under this section is guilty of a  
49 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period  
50 not to exceed three years.

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

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

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

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

9 (e) "Private club" means any corporation or unincorporated association which either: (1)  
10 Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is  
11 operated exclusively for the benefit of its members, which pays no part of its income to its  
12 shareholders or individual members, which owns or leases a building or other premises to which  
13 club are admitted only duly elected or approved dues-paying members in good standing of the  
14 corporation or association and their guests while in the company of a member and to which club  
15 the general public is not admitted, and which club maintains in the building or on the premises a  
16 suitable kitchen and dining facility with related equipment for serving food to members and their  
17 guests; (2) is a nonprofit social club, which is operated exclusively for the benefit of its members,  
18 which pays no part of its income to its shareholders or individual members, which owns or leases  
19 a building or other premises to which club are admitted only duly elected or approved dues-paying  
20 members in good standing of the corporation or association and their guests while in the company  
21 of a member and to which club the general public is not admitted, and which club maintains in the

22 building or on the premises a suitable kitchen and dining facility with related equipment for serving  
23 food to members and their guests; (3) is organized and operated for legitimate purposes which  
24 has at least 100 duly elected or approved dues-paying members in good standing, which owns  
25 or leases a building or other premises, including any vessel licensed or approved by any federal  
26 agency to carry or accommodate passengers on navigable waters of this state, to which club are  
27 admitted only duly elected or approved dues-paying members in good standing of the corporation  
28 or association and their guests while in the company of a member and to which club the general  
29 public is not admitted, and which club maintains in the building or on the premises a suitable  
30 kitchen and dining facility with related equipment and employs a sufficient number of persons for  
31 serving meals to members and their guests; or (4) is organized for legitimate purposes and owns  
32 or leases a building or other delimited premises in any state, county, or municipal park or at any  
33 airport, in which building or premises a club has been established, to which club are admitted only  
34 duly elected and approved dues-paying members in good standing and their guests while in the  
35 company of a member and to which club the general public is not admitted, and which maintains  
36 in connection with the club a suitable kitchen and dining facility and related equipment and  
37 employs a sufficient number of persons for serving meals in the club to the members and their  
38 guests.

39 (f) "Private caterer" means a licensed private club restaurant authorized by the  
40 commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating  
41 beer, or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a  
42 catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and  
43 nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A  
44 private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone,  
45 where the catering event is held. The private caterer or the persons or entity holding the catering  
46 event shall:

47 (1) Have at least 10 members and guests attending the catering event;

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

50           (3) Operate a private club restaurant on a daily operating basis;

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

54           (5) Provide to the commissioner, at least 7 days before the event is to take place:

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

57           (B) The name of the owner or operator of the unlicensed private venue;

58           (C) A copy of the contract or contracts between the private caterer, the person contracting  
59 with the caterer, and the unlicensed private venue;

60           (D) A floorplan of the unlicensed private venue to comprise the private catering premises,  
61 which shall only include spaces in buildings or rooms of an unlicensed private venue where the  
62 private caterer has control of the space for a set time period where the space safely accounts for  
63 the ingress and egress of the stated members and guests who will be attending the private  
64 catering event at the catering premises. The unlicensed private venue's floorplan during the set  
65 time period as stated in the contract shall comprise the private caterer's licensed premises, which  
66 is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating  
67 beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises;  
68 *Provided*, That the unlicensed private venue shall: (i) Be inside a building or structure, (ii) have  
69 other facilities to prepare and serve food and alcohol, (iii) have adequate restrooms, and sufficient  
70 building facilities for the number of members and guests expected to attend the private catering  
71 event, and (iv) otherwise be in compliance with health, fire, safety, and zoning requirements;

72           (6) Not hold more than 15 private catering events per calendar year. Upon reaching the  
73 16<sup>th</sup> event, the unlicensed venue shall obtain its own private club license;

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

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

78 (9) Use an age verification system approved by the commissioner.

79 (g) "Private club bar" means an applicant for a private club or licensed private club licensee  
80 that has a primary function for the use of the licensed premises as a bar for the sale and  
81 consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when  
82 licensed for such sales, while providing a limited food menu for members and guests, and meeting  
83 the criteria set forth in this subsection which:

84 (1) Has at least 100 members;

85 (2) Operates a bar with a kitchen, including at least: (A) A two-burner hot plate, air fryer,  
86 or microwave oven; (B) a sink with hot and cold running water; (C) a 17 cubic foot refrigerator or  
87 freezer, or some combination of a refrigerator and freezer, which is not used for alcohol cold  
88 storage; (D) kitchen utensils and other food consumption apparatus, as determined by the  
89 commissioner; and (E) food fit for human consumption available to be served during all hours of  
90 operation on the licensed premises;

91 (3) Maintains, at any one time, \$500 of food inventory capable of being prepared in the  
92 private club bar's kitchen. In calculating the food inventory, the commissioner shall include  
93 television dinners, bags of chips or similar products, microwavable food or meals, frozen meals,  
94 prepackaged foods, or canned prepared foods;

95 (4) Uses an age verification system approved by the commissioner for the purpose of  
96 verifying that persons under the age of 18 who are in the private club bar are accompanied by a  
97 parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent  
98 or legal guardian that person may not be admitted as a guest; and

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

100 (h) "Private club restaurant" means an applicant for a private club or licensed private club  
101 licensee that has a primary function of using the licensed premises as a restaurant for serving  
102 freshly prepared meals and dining in the restaurant area. The private club restaurant may have a  
103 bar area separate from or commingled with the restaurant, seating requirements for members  
104 and guests must be met by the restaurant area. The applicant for a private club restaurant license  
105 shall meet the criteria set forth in this subsection which:

106 (1) Has at least 100 members;

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

112 (3) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared  
113 in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner  
114 may not include television dinners, bags of chips, or similar products, microwavable meals, frozen  
115 meals, prepackaged foods, or canned prepared foods;

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

122 (5) May uncork and serve members and guests up to two bottles of wine that a member  
123 purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when  
124 licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use  
125 and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no

126 event may a member or a group of members and guests exceed two sealed bottles or containers  
127 of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant  
128 and for personal consumption by the member and guests. A member or guest may cork and  
129 reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative  
130 rules, for carrying unconsumed wine off the licensed premises;

131 (6) Must have at least two restrooms for members and their guests: *Provided*, That this  
132 requirement may be waived by the local health department upon supplying a written waiver of the  
133 requirement to the commissioner: *Provided, however*, That the requirement may also be waived  
134 for a historic building by written waiver supplied to commissioner of the requirement from the  
135 historic association or district with jurisdiction over a historic building: *Provided, further* That in no  
136 event shall a private club restaurant have less than one restroom; and

137 (7) Shall meet and be subject to all other private club requirements.

138 (i) "Private manufacturer club" means an applicant for a private club or licensed private  
139 club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm  
140 winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer, or  
141 nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for  
142 on-premises consumption at the licensee's licensed premises and in the area or areas denoted  
143 on the licensee's floorplan, and which meets the criteria set forth in this subsection and which:

144 (1) Has at least 100 members;

145 (2) Offers tours, may offer complimentary samples, and may offer space as a conference  
146 center or for meetings;

147 (3) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator,  
148 or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and  
149 apparatus as determined by the commissioner on the licensed premises and serves freshly  
150 prepared food at least 15 hours per week;

151 (4) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in  
152 the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner  
153 may not include television dinners, bags of chips, or similar products, microwavable meals, frozen  
154 meals, prepackaged foods, or canned prepared foods;

155 (5) Owns or leases, controls, operates, and uses acreage amounting to at least one acre  
156 which is contiguous bounded or fenced real property that would be listed on the licensee's  
157 floorplan and may be used for large events such as weddings, reunions, conferences, meetings,  
158 and sporting or recreational events;

159 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining  
160 buildings and structures on the private manufacturer club's floorplan that would comprise the  
161 licensed premises, which would be authorized for the lawful sale, service, and consumption of  
162 alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the  
163 licensed premises, whether these activities were conducted in a building or structure or outdoors  
164 while on the private manufacturer club's licensed premises, and as noted on the private  
165 manufacturer club's floorplan;

166 (7) Identifies a person, persons, an entity, or entities who or which has right, title, and  
167 ownership or lease interest in the real property, buildings, and structures located on the proposed  
168 licensed premises;

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

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

171 (j) "Private fair and festival" means an applicant for a private club or a licensed private  
172 club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set  
173 forth in this subsection which:

174 (1) Has at least 100 members;

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

178 (3) Prepares, provides, or engages a food vendor to provide adequate freshly prepared  
179 food or meals to serve its stated members and guests who will be attending the temporary festival,  
180 fair, or other event, and further shall provide any documentation or agreements of such to the  
181 commissioner prior to approval;

182 (4) Does not use third-party entities or individuals to purchase, sell, furnish, or serve  
183 alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer;

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

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

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

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

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

193 (1) Has at least 2,000 members;

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

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

199 (4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared  
200 in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not  
201 include microwavable, frozen, or canned foods;

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

207 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining  
208 buildings and structures on the private hotel's floorplan which would comprise the licensed  
209 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic  
210 liquors throughout the licensed premises whether these activities were conducted in a building or  
211 structure or outdoors while on the private hotel's licensed premises and as noted on the private  
212 hotel's floorplan;

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

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

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

217 (l) "Private resort hotel" means an applicant for a private club or licensed private club  
218 licensee meeting the criteria set forth in this subsection which:

219 (1) Has at least 5,000 members;

220 (2) Offers short-term, daily rate accommodations or lodging for members and their guests  
221 amounting to at least 50 separate bedrooms;

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

225 (4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared  
226 in the private resort hotel's full kitchen, and in calculating the food inventory the commissioner  
227 may not include microwavable, frozen, or canned foods;

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

232 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining  
233 buildings and structures on the private resort hotel's floorplan which would comprise the licensed  
234 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic  
235 liquors throughout the licensed premises whether these activities were conducted in a building or  
236 structure or outdoors while on the private resort hotel's licensed premises and as noted on the  
237 private resort hotel's floorplan;

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

240 (8) Uses an age verification system approved by the commissioner;

241 (9) Meets and is subject to all other private club requirements; and

242 (10) May have a separately licensed resident brewer with a brewpub license inner-  
243 connected via a walkway, doorway, or entryway, all as determined and approved by the  
244 commissioner, for limited access during permitted hours of operation for tours and complimentary  
245 samples at the resident brewery.

246 (m) "Private golf club" means an applicant for a private club or licensed private club  
247 licensee meeting the criteria set forth in this subsection which:

248 (1) Has at least 100 members;

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

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

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

257 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining  
258 buildings and structures on the private golf club's floorplan which would comprise the licensed  
259 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic  
260 liquors throughout the licensed premises whether these activities were conducted in a building or  
261 structure or outdoors while on the private golf club's licensed premises and as noted on the private  
262 golf club's floorplan;

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

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

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

267 (n) "Private nine-hole golf course" means an applicant for a private club or licensed private  
268 club licensee meeting the criteria set forth in this subsection which:

269 (1) Has at least 50 members;

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

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

274 (4) Owns or leases, controls, operates, and uses acreage amounting to at least 30  
275 contiguous acres of bounded or fenced real property which would be listed on the private nine-  
276 hole golf course's floorplan and could be used for golfing events and large contracted for group-

277 type events such as weddings, reunions, conferences, meetings, and sporting or recreational  
278 events;

279 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining  
280 buildings and structures on the private nine-hole golf course's floorplan which would comprise the  
281 licensed premises, which would be authorized for the lawful sales, service, and consumption of  
282 alcoholic liquors throughout the licensed premises whether these activities were conducted in a  
283 building or structure or outdoors while on the private nine-hole golf course's licensed premises  
284 and as noted on the private nine-hole golf course's floorplan;

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

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

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

289 (o) "Private tennis club" means an applicant for a private club or licensed private club  
290 licensee meeting the criteria set forth in this subsection which:

291 (1) Has at least 100 members;

292 (2) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and  
293 a clubhouse or similar facility;

294 (3) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on  
295 the licensed premises and is capable of serving freshly prepared food;

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

300 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining  
301 buildings and structures on the private tennis club's floorplan that would comprise the licensed  
302 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic

303 liquors throughout the licensed premises whether these activities were conducted in a building or  
304 structure or outdoors while on the private tennis club's licensed premises and as noted on the  
305 private tennis club's floorplan;

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

309 (7) Meets and is subject to all other private club requirements; and

310 (8) Uses an age verification system approved by the commissioner.

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

317 (1) Have at least 1000 members;

318 (2) Maintain an open air or closed air stadium venue primarily used for sporting events,  
319 such as football, baseball, soccer, auto racing, or other professional sports, and also weddings,  
320 reunions, conferences, meetings, or other events where parties must reserve the stadium venue  
321 in advance of the event;

322 (3) Operate a restaurant and full kitchen with ovens, as determined by the commissioner,  
323 on the licensed premises and capable of serving freshly prepared food, or meals to serve its  
324 stated members, guests, and patrons who will be attending the event at the private professional  
325 sports stadium;

326 (4) Own or lease, control, operate, and use acreage amounting to at least 3 contiguous  
327 acres of bounded or fenced real property, as determined by the commissioner, which would be  
328 listed on the professional sports stadium's floorplan and could be used for contracted for

329 professional sporting events, group-type weddings, reunions, conferences, meetings, or other  
330 events;

331 (5) List the entire property from subdivision (4) of this subsection and all adjoining buildings  
332 and structures on the private professional sports stadium's floorplan which would comprise the  
333 licensed premises, which would be authorized for the lawful sales, service, and consumption of  
334 alcoholic liquors throughout the licensed premises whether these activities were conducted in a  
335 building or structure or outdoors while on the private professional sports stadium's licensed  
336 premises and as noted on the private professional sports stadium's floorplan;

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

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

340 (8) Use an age verification system approved by the commissioner.

341 (q) "Private farmers market" means an applicant for a private club or licensed private club  
342 licensee that operates as an association of bars, restaurants, retailers who sell West Virginia  
343 made products among other products, and other stores who open primarily during daytime hours  
344 of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the  
345 sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur  
346 for on-premises consumption, such as reserved weddings, reserved dinners, pairing events,  
347 tasting events, reunions, conferences, meetings, or other special events and does not maintain  
348 daily or regular operating hours as a bar or restaurant, and all business that are members of the  
349 association have agreed in writing to be liable and responsible for all sales, service, furnishing,  
350 tendering and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft  
351 beer occurring on the entire licensed premises of the private farmer's market, including indoor  
352 and outdoor bounded areas, and further the applicant shall:

353 (1) Have at least 100 members;

354           (2) Have one or more members operating a private club restaurant and full kitchen with  
355 ovens, four-burner ranges, a refrigerator, or freezer (or some combination of the two), and other  
356 kitchen utensils and apparatus as determined by the commissioner on the licensed premises and  
357 serves freshly prepared food at least 15 hours per week;

358           (3) Have one or more members operating who maintain, at any one time, \$1,000 of fresh  
359 food inventory capable of being prepared for events conducted at the private farmers market in  
360 the private club restaurant's full kitchen, and in calculating the food inventory the commissioner  
361 may not include television dinners, bags of chips or similar products, microwavable meals, frozen  
362 meals, prepackaged foods, or canned prepared foods;

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

368           (5) Have an association that lists in the application for licensure the entire property and all  
369 adjoining buildings and structures on the private farmers market's floorplan which would comprise  
370 the licensed premises, which would be authorized for the lawful sales, service, and consumption  
371 of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed  
372 premises whether these activities were conducted in a building or structure or outdoors while on  
373 the private farmers market's licensed premises and as noted on the private farmers market's  
374 floorplan;

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

377           (7) Have at least two separate and unrelated vendors applying for the license and  
378 certifying that all vendors in the association have agreed to the liability, responsibility associated  
379 with a private farmers market license;

380 (8) Only use its employees, independent contractors, or volunteers to purchase, sell,  
381 furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

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

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

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

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

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

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

395 (1) Has at least 25 members;

396 (2) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions,  
397 conferences, meetings, or other events where parties must reserve or contract for the venue,  
398 facility, barn, or pavilion in advance of the event;

399 (3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner,  
400 on the licensed premises and is capable of serving freshly prepared food, or may engage a food  
401 caterer to provide adequate freshly prepared food or meals to serve its stated members, guests,  
402 and patrons who will be attending the event at the private wedding venue or barn. The applicant  
403 or licensee shall provide written documentation including a list of food caterers or written  
404 agreements regarding any food catering operations to the commissioner prior to approval of a  
405 food catering event;

406 (4) Owns or leases, controls, operates, and uses acreage amounting to at least two  
407 contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that,  
408 the property is less than two acres and is remotely located, subject to the commissioner's  
409 approval. The bounded or fenced real property may be listed on the private wedding venue's  
410 floorplan and may be used for large events such as weddings, reunions, conferences, meetings,  
411 or other events;

412 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining  
413 buildings and structures on the private wedding venue or barn's floorplan that would comprise the  
414 licensed premises, which would be authorized for the lawful sales, service, and consumption of  
415 alcoholic liquors throughout the licensed premises whether these activities were conducted in a  
416 building or structure or outdoors while on the private wedding venue or barn's licensed premises  
417 and as noted on the private wedding venue or barn's floorplan;

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

420 (7) Meets and is subject to all other private club requirements; and

421 (8) Uses an age verification system approved by the commissioner.

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

425 (1) Has at least 100 members;

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

430 (3) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as  
431 determined by the commissioner, on the licensed premises and capable of serving freshly

432 prepared food, or meals to serve its stated members, guests, and patrons who will be attending  
433 the event at the private professional sports stadium. A licensee may contract with temporary food  
434 vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-  
435 sport complex not readily accessible by the main facility;

436 (4) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared  
437 in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner  
438 may not include television dinners, bags of chips, or similar products, microwavable meals, frozen  
439 meals, prepackaged foods, or canned prepared foods;

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

445 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining  
446 buildings and structures on the private multi-sport complex's floorplan which would comprise the  
447 licensed premises, which would be authorized for the lawful sales, service, and consumption of  
448 alcoholic liquors throughout the licensed premises whether these activities were conducted in a  
449 building or structure or outdoors while on the private multi-sport complex's licensed premises and  
450 as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors  
451 from a golf cart or food truck owned or leased by the licensee and also operated by the licensee  
452 when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

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

455 (8) Meets and is subject to all other private club requirements; and

456 (9) Uses an age verification system approved by the commissioner.

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

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

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

3           (b) The annual license fee for a license issued under the provisions of this article to a  
4 private club other than a private club of the type specified in subsection (a) of this section is \$1,000  
5 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club  
6 restaurant to be licensed as a private caterer as defined in §60-7-2 of this code; \$1,500 if the  
7 private club is a private wedding venue or barn; \$2,000 if the private club is a private nine-hole  
8 golf course, private farmers market, private professional sports stadium, private multi-sport  
9 complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code;  
10 \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the  
11 private club is a private hotel with three or fewer designated areas or a private golf club as defined  
12 in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-  
13 7-2 of this code, the private resort hotel may designate areas within the licensed premises for the  
14 lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The  
15 annual license fee for a private resort hotel with five or fewer designated areas is \$7,500 and the  
16 annual license fee for a private resort hotel with at least six, but no more than 10 designated areas  
17 is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15  
18 designated areas shall be \$17,500. The annual license fee for a private resort hotel with no fewer  
19 than 15 nor more than 20 designated areas is \$22,500. A private resort hotel that obtained the

20 license and paid the \$22,500 annual license fee may, upon application to and approval of the  
21 commissioner, designate additional areas for a period not to exceed seven days for an additional  
22 fee of \$150 per day, per designated area.

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

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

33 (e) The commissioner shall pay the fees to the State Treasurer and credited to the General  
34 Revenue Fund of the state.

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

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

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

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

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

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

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

12 (c) *Requirements.-*

13 (1) The licensed private club and nonprofit shall jointly complete an application, at least  
14 15 days prior to the event. The application may require, but is not limited to, information relating  
15 to the date, time, place, floorplan of the charitable event, and any other information as the  
16 commissioner may require. The applicants shall include with the application a written signed and  
17 notarized statement that at least 80 percent of the net proceeds from the charitable event will be  
18 donated directly to the nonprofit. The commissioner may audit the licensed private club and  
19 nonprofit to verify the 80 percent requirement has been met.

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

23 (3) The licensed private club and nonprofit shall submit, and the commissioner shall  
24 review, the applicants' list of rare, antique, or vintage liquor, and the applicants shall submit

25 documentation showing that the liquor was purchased from a licensed retail outlet in accordance  
26 with §60-3A-1 *et seq.* of this code with all taxes and fees paid. Any rare, antique, or vintage liquor  
27 with no documentation or that was not purchased in accordance with §60-3A-1 *et seq.* of this  
28 code, may be approved for auction, if all taxes and fees are paid to the commissioner in  
29 accordance with §60-3A-1 *et seq.* of this code. Any undocumented rare, antique, or vintage liquor  
30 approved for charitable auction by the commissioner must be labeled in the interest of public  
31 health and safety: “Purchase and consume at your own risk, as the authenticity or source of  
32 manufacture of this bottle has not been verified”.

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

35 (5) The winning bidder of the auctioned rare, antique, or vintage liquor shall pay and  
36 receive the sealed rare, antique, or vintage liquor bottle before the conclusion of the event.

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

38 (d) *Exceptions.* –

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

43 (2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception  
44 of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-  
45 3A-1 *et seq.* of this code to sell liquor; and

46 (3) The private club, upon licensure by this section, is provided a limited, one-time  
47 exception from §60-7-12(a)(1) and §60-6-8(6) of this code, to permit the licensed nonprofit to sell  
48 at auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, to  
49 permit the carrying onto, the sale of, and the carrying off of the licensed premises the approved  
50 sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are

51 subject to all penalties for violations committed under §60-3A-1 *et seq.* of this code and §60-7-1  
52 *et seq.* of this code.

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

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

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

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

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

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

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

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

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

20 (7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and  
21 provide adequate freshly prepared food or meals to serve its stated members and guests who will

22 be attending the temporary festival, fair, or other event, and provide any written documentation or  
23 agreements of the food caterer to the commissioner prior to approval of the license;

24 (8) Only use its employees, independent contractors, or volunteers to purchase, sell,  
25 furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

26 (9) Provide adequate restroom facilities, whether permanent or portable, to serve the  
27 stated members and guests who will be attending the private multi-vendor festival, fair, or other  
28 event;

29 (10) Provide an executed agreement between the vendors and/or food caterers stating  
30 that each vendor is jointly and severally liable for any improper acts or conduct committed during  
31 the multi-vendor festival or fair event;

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

35 (12) Provide a floorplan for the proposed premises with one defined and bounded indoor  
36 and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and  
37 guests who will be attending the festival, fair, or other event, and the floorplan that would comprise  
38 the licensed premises, which would be authorized for the lawful sales, service, and consumption  
39 of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed  
40 premises whether these activities were conducted in a building or structure, or outdoors while on  
41 the licensed premises and as noted on the floorplan;

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

43 (14) Use an age verification system approved by the commissioner.

44 (c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served  
45 pursuant to the license created by this section shall be purchased from the licensed distributor  
46 that services the area in which the private multi-vendor fair and festival will be held or from a

47 resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 *et seq.*  
48 of this code.

49 (d) Wine sold, furnished, tendered, or served pursuant to the license created by this  
50 section shall be purchased from a licensed distributor, winery, or farm winery in accordance with  
51 §60-8-1 *et seq.* of this code.

52 (e) Liquor sold, furnished, tendered, or served pursuant to the license created by this  
53 section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous  
54 market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-  
55 3A-1 *et seq.* of this code.

56 (f) A licensee authorized by this section may use bona fide employees, independent  
57 contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer,  
58 or nonintoxicating craft beer; *Provided*, That the licensee shall train all employees, independent  
59 contractors, or volunteers to verify legal identification and to verify signs of intoxication.

60 (g) Licensed representatives of a brewer, resident brewer, beer distributor, wine  
61 distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor  
62 brokers may attend a private multi-vendor festival or fair and discuss their respective products but  
63 may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating  
64 beer, or nonintoxicating craft beer.

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

**§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 or  
6 county commission in which the licensee operates. The commissioner shall develop and make  
7 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 county  
9 approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised  
10 floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or  
11 nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the  
12 commissioner's requirements, in an approved and bounded outdoor area. The approved and  
13 bounded area need not be adjacent to the licensee's licensed premises, but in close proximity,  
14 for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close  
15 proximity" means an available area within 150 feet of a licensee's licensed premises and under  
16 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 or  
20 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 seasonally  
27 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 21  
34 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this  
35 article.

**§60-7-8e. Private club restaurant or private manufacturer club licensee’s authority to sell  
craft cocktail growlers.**

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 liquor 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 private club restaurant or private manufacturer club, to have  
6 certain abilities to promote the sale of liquor manufactured in this state for the benefit of the  
7 citizens of this state, the state’s growing distilling industry, and the state’s hospitality and tourism  
8 industry, all of which are vital components for the state’s economy.

9 (b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private  
10 manufacturer club is authorized under a current and valid license and meets the requirements of  
11 this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four  
12 fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire  
13 beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a

14 sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to  
15 the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing  
16 the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably  
17 intoxicated. There shall be a \$100 non-prorated, non-refundable annual fee to sell craft cocktail  
18 growlers.

19 (c) *Retail sales.* — Every licensee licensed under this section shall comply with all the  
20 provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with  
21 markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler  
22 sales, and shall be subject to all applicable requirements and penalties in this article.

23 (d) *Payment of taxes.* — Every licensee licensed under this section shall pay all sales  
24 taxes required of retail liquor outlets, in addition to any other taxes required, and meet any  
25 applicable licensing provisions as required by this chapter and by rule of the commissioner.

26 (e) *Advertising.* — Every licensee licensed under this section may only advertise a  
27 particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery  
28 upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and  
29 licensed broker to the licensee. Advertisements may not encourage intemperance or target  
30 minors.

31 (f) *Craft cocktail growler defined.* — For purposes of this chapter, “Craft Cocktail Growler”  
32 means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved  
33 by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of  
34 being securely sealed. The growler is utilized by an authorized licensee for purposes of off-  
35 premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not  
36 on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely  
37 sealed craft cocktail growler is not an open container under state and local law. A craft cocktail  
38 growler with a broken seal is an open container under state and local law unless it is located in  
39 an area of the motor vehicle physically separated from the passenger compartment. A craft

40 cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed,  
41 and sold, all as set forth in this article, is a sealed container.

42 (h) *Craft cocktail growler requirements.* — A licensee licensed under this section must  
43 prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to  
44 fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal,  
45 and label any craft cocktail growler prior to its sale. A licensee licensed under this section may  
46 refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under  
47 this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee  
48 licensed under this section may not fill or refill any craft cocktail growler that appears to be  
49 cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes  
50 of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat  
51 shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form  
52 a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks  
53 apart when the craft cocktail growler is opened.

54 (i) *Craft cocktail growler labeling.* — A licensee licensed under this section selling craft  
55 cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail  
56 growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor  
57 in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol  
58 content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler  
59 was filled or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal  
60 labeling and warning requirements.

61 (j) *Craft cocktail growler sanitation.* — A licensee licensed under this section shall clean  
62 and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and  
63 county health requirements prior to its sealing. In addition, the licensee licensed under this section  
64 shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe  
65 lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers.

66 Failure to comply with this subsection may result in penalties under this article: *Provided*, That, if  
67 the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler  
68 must only be used one-time, for one filling, and be discarded after the one-time use.

69 (k) *Pre-mixing of craft cocktail.* - A licensee licensed under this section may pre-mix the  
70 nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing,  
71 and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft  
72 cocktail growler. A licensee licensed under this section must dispose of any expired premixed  
73 nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such  
74 premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee  
75 authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and  
76 is also subject to the requirements of this section for a craft cocktail growler.

77 (l) *Limitations on licensees.* — A licensee licensed under this section shall not sell craft  
78 cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under  
79 this section must provide food or a meal along with one sealed craft cocktail growler to a patron  
80 who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler  
81 order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not  
82 visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed  
83 under this section may only sell one sealed craft cocktail growler to a patron who has not been  
84 consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail  
85 growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed  
86 under this section shall be subject to the applicable penalties under this article for violations of  
87 this article.

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

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

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

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

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

23 (d) *Sale Requirements.* -

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

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

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

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

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

49 convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail  
50 growler shall not exceed five dollars.

51 (e) *Craft Cocktail Growler Delivery Requirements.* -

52 (1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be  
53 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third  
54 party private delivery licensee shall file each delivery person's name, driver's license, and vehicle  
55 information with the commissioner;

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

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

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

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

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

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

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

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

82 (1) The delivery person may only permit the person who placed the order through a  
83 telephone order, a mobile ordering application, or web-based software to accept the prepared  
84 food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with  
85 the delivery person's visual review and age verification and, as application, a stored scanned  
86 image of the purchasing person's legal identification;

87 (2) Any mobile ordering application or web-based software used shall create a stored  
88 record and image of the purchasing person's legal identification and details of the sale, accessible  
89 by the delivery driver for verification, and shall include the delivery driver's name and vehicle  
90 information;

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

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

98 (5) The third party private delivery licensee or the private club restaurant or private  
99 manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this

100 section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic  
101 copy of his or her permit as proof of licensure.

102 (g) *Private Cocktail Delivery Permit.* -

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

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

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

113 (h) *Enforcement.* -

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

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

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

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

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

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

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

5           (2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper  
6 entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine,  
7 multiple coin console slot machine, or device in the nature of a slot machine; however, various  
8 games, gaming, and wagering conducted by duly licensed persons of the West Virginia State  
9 Lottery Commission, charitable bingo games conducted by a duly licensed charitable or public  
10 service organization (or its auxiliaries), pursuant to §47-20-1 *et seq.* of this code, and charitable  
11 raffle games conducted by a duly licensed charitable or public service organization (or its  
12 auxiliaries), pursuant to §47-21-1 *et seq.* of this code, all of which are permissible on a licensee's  
13 licensed premises when operated in accordance with this code and rules promulgated thereunder.  
14 A private resort hotel holding a license issued pursuant to §60-7-1 *et seq.* of this code, may sell,  
15 tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed  
16 under §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code, during hours of  
17 operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this  
18 code;

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

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

26           (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any  
27 licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m.  
28 and 6:00 a.m. on weekdays, Saturdays, and Sundays, or, between the hours of 3:00 a.m. and  
29 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday;  
30 and

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

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

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

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

41           (10)(A) Employ any person who is less than 16 years of age in a position where the  
42 primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating  
43 beer, wine, or alcoholic liquors to any person;

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

48           (11) Violate any reasonable rule of the commissioner.

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

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

**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, grocery  
7 stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs,  
8 or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and  
9 Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under  
10 authority of this article and maintains a warehouse in this state for the distribution of wine. For the  
11 purpose of a distributor only, the term “person” means and includes an individual, firm, trust,  
12 partnership, limited partnership, limited liability company, association, or corporation. Any trust  
13 licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or  
14 other persons in active control of the activities of the trust relating to the distributor license, is  
15 liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful  
16 acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this  
17 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 supplies  
24 for the table are sold for consumption off the premises with average monthly sales (exclusive of  
25 sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of  
26 wine) of not less than \$500. The term “grocery store” also includes and means a separate and  
27 segregated portion of any other retail store which is dedicated solely to the sale of food, food  
28 products, and supplies for the table for consumption off the premises with average monthly sales  
29 with respect to the separate or segregated portion (exclusive of sales of wine) of not less than  
30 \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500.

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

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

47 the distributor license that are unlawful acts or violations of this article, notwithstanding the liability  
48 of trustees in §44D-10-1 *et seq.* of this code.

49 “Licensee” means the holder of a license granted under the provisions of this article.

50 “Nonfortified dessert wine” means a wine that is a dessert wine to which brandy or other  
51 alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent  
52 and less than or equal to 17 percent.

53 “Person” means and includes an individual, firm, partnership, limited partnership, limited  
54 liability company, association, or corporation.

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

65 “Private wine restaurant” means a restaurant which: (1) Is a partnership, limited  
66 partnership, corporation, unincorporated association, or other business entity which has, as its  
67 principal purpose, the business of serving meals on its premises to its members and their guests;  
68 (2) is licensed under the provisions of this article as to all of its premises or as to a separate  
69 segregated portion of its premises to serve wine to its members and their guests when the sale  
70 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-  
71 paying members and their guests while in the company of a member and does not admit the  
72 general public. Private clubs that meet the private wine restaurant requirements numbered (1),

73 (2), and (3) in this definition shall be considered private wine restaurants: *Provided*, That, a private  
74 wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom  
75 requirement may be waived by a written waiver provided from a local health department to the  
76 commissioner: *Provided, further*, That a private wine restaurant located in an historic building may  
77 also be relieved of the two restroom requirement if a historic association or district with jurisdiction  
78 over a historic building provides a written waiver of the requirement to the commissioner: *And*  
79 *Provided, further*, That in no event shall a private wine restaurant have less than one restroom.

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

90 “Retailer” means any person licensed to sell wine at retail to the public at his or her  
91 established place of business for off-premises consumption and who is licensed to do so under  
92 authority of this article.

93 “Supplier” means any manufacturer, producer, processor, winery, farm winery, national  
94 distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of  
95 wine to any licensed West Virginia distributor.

96 “Table wine” means a wine with an alcohol content by volume between 0.5 percent and  
97 14 percent.

98 “Tax” includes within its meaning interest, additions to tax, and penalties.

99           “Taxpayer” means any person liable for any tax, interest, additions to tax, or penalty under  
100 the provisions of this article, and any person claiming a refund of tax.

101           “Varietal wine” means any wine labeled according to the grape variety from which the wine  
102 is made.

103           “Vintage wine” or “vintage-dated wine” means wines from which the grapes used to  
104 produce the wine are harvested during a particular year, or wines produced from the grapes of a  
105 particular harvest in a particular region of production.

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

112           “Wine specialty shop” means a retailer who deals principally in the sale of table wine,  
113 nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine  
114 and: (1) Who maintains a representative number of wines for sale in his or her inventory which  
115 are designated by label as varietal wine, vintage, generic, and/or according to region of production  
116 and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual  
117 bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may  
118 maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more  
119 than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All  
120 wine available for sale shall be for off-premises consumption except where wine tasting or wine  
121 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 may be licensed simultaneously as a supplier and a private wine bed and breakfast,  
8 private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a  
9 distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa.  
10 No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a  
11 private wine restaurant, or a private wine spa. Any person who is licensed to engage in any  
12 business concerning the manufacture, sale, or distribution of wine may also engage in the  
13 manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

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

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

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

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

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

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

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

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

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

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

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

43           (11) \$150 per year for a direct shipper's license for a licensee who sells and ships only  
44 wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert  
45 wine, port, sherry, or Madeira wines;

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

49           (13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate  
50 warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be  
51 separately licensed and there shall be collected with respect to each location the annual license  
52 fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a

53 nonintoxicating beer or nonintoxicating beer distributor then there is no additional license fee to  
54 distribute hard cider.

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

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

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

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

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

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

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

88           (3) A licensed winery or a farm winery, which has the festival or fair licensee's written  
89 authorization and approval from the commissioner, may, in addition to or in conjunction with the  
90 festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed  
91 three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during  
92 the operation of a festival or fair only; and may sell wine for off-premises consumption only:  
93 *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings,  
94 samples and off-premises sales shall occur under the hours of operation as required in this article,  
95 except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of  
96 2:00 a.m. and 6:00 a.m.

97           (4) A festival or fair license may be issued to a "wine club" as defined in this subdivision  
98 for a license fee of \$250. The festival or fair committee or the governing body shall designate a  
99 person to organize a club under a name which includes the name of the festival or fair and the  
100 words "wine club". The license shall be issued in the name of the wine club. A licensee sell wine  
101 as provided in this subdivision until the wine club has at least 50 dues-paying members who have  
102 been enrolled, and to whom membership cards have been issued. Thereafter, new members may  
103 be enrolled and issued membership cards at any time during the period for which the license is

104 issued. A wine club licensed under the provisions of this subdivision may sell wine only to its  
105 members, and in portions not to exceed eight ounces per serving. The sales shall take place on  
106 premises or in an area cordoned or segregated so as to be closed to the general public, and the  
107 general public shall not be admitted to the premises or area. A wine club licensee under the  
108 provisions of this subdivision may serve complimentary samples of wine in moderate quantities  
109 for tasting. A wine club may not make wine purchases from a direct shipper where the wine may  
110 be consumed on the licensed premises of any Class A private wine retail license or private club.  
111 A wine club which violates the provisions of this subdivision is subject to the penalties in this  
112 article.

113 (5) A licensed winery or farm winery approved to participate in a festival or fair under the  
114 provisions of this section and the licensee holding the license, or the licensed winery or farm  
115 winery approved to attend a licensed festival or fair, is subject to all other provisions of this article  
116 and the rules and orders of the commissioner relating to the license: *Provided*, That the  
117 commissioner may by rule or order provide for certain waivers or exceptions with respect to the  
118 provisions, rules, or orders required by the circumstances of each festival or fair, including, without  
119 limitation, the right to revoke or suspend any license issued pursuant to this section prior to any  
120 notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided*,  
121 *however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this  
122 code, be waived nor shall any exception be granted with respect to those subsections.

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

125 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in  
126 subsection (q) of this section may conduct the same sampling and sales set forth in subsection  
127 (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and  
128 festival license and temporary and limited licensure by the commissioner. An unlicensed winery  
129 is subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection

130 (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain  
131 waivers or exceptions with respect to the provisions, rules, or orders required by the  
132 circumstances of each festival or fair. The commissioner may revoke or suspend any license  
133 issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-  
134 8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the  
135 provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted  
136 with respect to those subsections.

137 (i)(1) The commissioner may issue a special license for the retail sale of wine in a  
138 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles  
139 the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the  
140 purpose of this subsection, “professional baseball stadium” means a facility constructed primarily  
141 for the use of a major or minor league baseball franchisee affiliated with the National Association  
142 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league  
143 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning  
144 on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless  
145 of the length of the term of the license. The application for the special license shall contain  
146 information required by the commissioner and must be submitted to the commissioner at least 30  
147 days prior to the first day when wine is to be sold at the professional baseball stadium. The special  
148 license may be issued in the name of the baseball franchisee or the name of the primary food and  
149 beverage vendor under contract with the baseball franchisee. These sales must take place within  
150 the confines of the professional baseball stadium. The exterior of the area where wine sales may  
151 occur shall be surrounded by a fence or other barrier prohibiting entry except upon the  
152 franchisee’s express permission, and under the conditions and restrictions established by the  
153 franchisee, so that the wine sales area is closed to free and unrestricted entry by the general  
154 public.

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

163           (3) The commissioner may propose legislative rules for promulgation in accordance with  
164 §29A-3-1 *et seq.* of this code to implement this subsection.

165           (j) A license to sell wine granted to a private wine bed and breakfast, private wine  
166 restaurant, private wine spa, or a private club under the provisions of this article entitles the  
167 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale  
168 accompanies the serving of food or a meal to its members and their guests in accordance with  
169 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private  
170 wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to  
171 purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to  
172 two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its  
173 members and their guests in accordance with the provisions of this article and in accordance with  
174 rules promulgated by the commissioner for the purpose of consumption of the wine off premises:  
175 *Provided, however*, That a licensed private wine restaurant or a private club may offer for sale,  
176 for consumption off the premises, sealed bottles of wine to its customers provided that no more  
177 than one bottle is sold per each person over 21 years of age, as verified by the private wine  
178 restaurant or private club, for consumption off the premises. The licensees may keep and maintain  
179 on their premises a supply of wine in quantities appropriate for the conduct of operations thereof.  
180 Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine

181 restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by  
182 §11-16-1 *et seq.* of this code.

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

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

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

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

195 (o) A wine specialty shop under this article may also hold a wine sampling license  
196 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine  
197 specialty shop location during regular hours of business. The wine specialty shop may serve up  
198 to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any  
199 one consumer in one day. Persons serving the complimentary samples shall be 21 years of age  
200 or older and an authorized representative of the licensed wine specialty shop, winery, farm winery,  
201 or a representative of a distributor or registered supplier. Distributor and supplier representatives  
202 attending wine sampling events shall register with the commissioner. No licensee, employee, or  
203 representative may furnish, give, sell, or serve complimentary samples of wine to any person less  
204 than 21 years of age or to a person who is physically incapacitated due to the consumption of  
205 alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission  
206 from the commissioner for all wine sampling events 30 days prior to the event. Wine sampling

207 events may not exceed six hours per calendar day. Licensees shall purchase all wines used  
208 during these events from a licensed farm winery or a licensed distributor.

209 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit  
210 corporations and associations allowing the sale and serving of wine, and may, if applicable, also  
211 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,  
212 when raising money for athletic, charitable, educational, or religious purposes. "Auction or  
213 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid  
214 auction, whether or not the auction requires in-presence bidding or online Internet-based  
215 electronic bidding through a secure application or website, but shall not include any action in  
216 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall  
217 contain information required by the commissioner and shall be submitted to the commissioner at  
218 least 30 days prior to the event. Accompanying the license application, the applicant shall submit  
219 a signed and notarized statement that at least 80 percent of the net proceeds from the charitable  
220 event will be donated directly to the nonprofit corporation or organization. Wines used during  
221 these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or  
222 a farm winery. A licensed winery or farm winery which is authorized in writing by a representative  
223 of the duly organized, nonprofit corporation or association which has obtained the one-day  
224 license; is in good standing with the state; and obtains the commissioner's approval prior to the  
225 one-day license event may, in conjunction with the one-day licensee, exhibit, conduct  
226 complimentary tastings, or sell samples not to exceed three, two-fluid ounce tastings or samples  
227 per patron, for consumption on the premises during the operation of the one-day license event;  
228 and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for  
229 off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-  
230 day event, the tastings, samples and off-premises sales shall occur under the hours of operation  
231 permitted by this article, except on Sunday, tastings, samples, and off-premises sales are unlawful  
232 between the hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan

233 for the event subject to the requirements in the code and rules. Under no circumstances may the  
234 provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted  
235 with respect to those subsections.

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

242 (2) The application shall include, but is not limited to, the person or entity's name, address,  
243 taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed  
244 and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and  
245 notarized verification that it is in good standing with its domicile state; copies of its federal  
246 certificate of label approvals and certified lab alcohol analysis for the wines it desires to  
247 temporarily provide samples and temporarily sell wine in sealed containers for off-premises  
248 consumption at a special one-day license for a nonprofit event issued under subsection (p) of this  
249 section; and any other information as the commissioner may reasonably require.

250 (3) The applicant winery shall include a list of all wines proposed to be temporarily sampled  
251 and temporarily sold in sealed containers at a special one-day license for a nonprofit event so  
252 that the wines may be reviewed in the interest of public health and safety. Once approved, the  
253 submitted wine list creates a temporary wine brand registration for up to two special one-day  
254 licenses for a nonprofit event for no additional fee.

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

259 (5) An application must be submitted per special one-day license for a nonprofit event the  
260 applicant winery desires to attend, and the license fee shall cover up to two special one-day  
261 license for nonprofit events before an additional fee would be is required. In no circumstance  
262 would the winery be permitted to attend more than four special one-day licensed events. Any  
263 applicant or unlicensed winery desiring to attend more than four special one-day license for  
264 nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate  
265 licensure as a winery or a farm winery in this state.

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

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

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

279 (r) The commissioner may issue special licenses to heritage fairs and festivals allowing  
280 the sale, serving, and sampling of wine from a licensed farm winery. The license application shall  
281 contain information required by the commissioner and shall be submitted to the commissioner at  
282 least 30 days prior to the event. Wines used during these events may be donated by or purchased  
283 from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this  
284 code be waived nor may any exception be granted with respect thereto. The commissioner shall

285 propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to  
286 implement the provisions of this subsection.

287 (s)(1) The commissioner may issue a special license for the retail sale of wine in a college  
288 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and  
289 serve wine for consumption in a college stadium. For the purpose of this subsection, “college  
290 stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a  
291 member of the National Collegiate Athletic Association, or its successor, and used as a football,  
292 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued  
293 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending  
294 on the next following June 30, and its fee is \$250 regardless of the length of the term of the  
295 license. The application for the special license shall contain information required by the  
296 commissioner and must be submitted to the commissioner at least 30 days prior to the first day  
297 when wine is to be sold. The special license may be issued in the name of the National Collegiate  
298 Athletic Association Division I, II, or III college or university or the name of the primary food and  
299 beverage vendor under contract with that college or university. All sales must take place within  
300 the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may  
301 occur shall be surrounded by a fence or other barrier prohibiting entry except upon the college or  
302 university’s express permission, and under the conditions and restrictions established by the  
303 college or university, so that the wine sales area is closed to free and unrestricted entry by the  
304 general public.

305 (2) A license issued under this subsection and the licensee are subject to the other  
306 requirements of this article and the rules and orders of the commissioner relating to the special  
307 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions  
308 to those rules or orders as required by the circumstances of each the college stadium. The  
309 commissioner may revoke or immediately suspend any license issued pursuant to this section

310 prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided,*  
311 *however,* That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception  
312 be granted concerning those subsections.

313 (3) The commissioner may propose legislative rules for promulgation in accordance with  
314 §29A-3-1 *et seq.* of this code to implement this subsection.

**§60-8-4. Liter tax.**

1 There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to  
2 distributors, and including all wine sold and sent to persons 21 years of age or older who reside  
3 in West Virginia from direct shippers, except wine sold to the commissioner, a tax of twenty-six  
4 and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted  
5 from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

6 Before the 16th day of each month thereafter, every supplier, distributor and direct shipper  
7 shall make a written report under oath to the Tax Commissioner and the commissioner showing  
8 the identity of the purchasing person, the quantity, label and alcoholic content of wine sold by the  
9 supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who  
10 reside in West Virginia during the preceding month and at the same time shall pay the tax imposed  
11 by this article on the wine sold to the distributor or to persons 21 years of age or older who reside  
12 in West Virginia during the preceding month to the Tax Commissioner.

13 The reports shall contain other information and be in the form required by the Tax  
14 Commissioner. For purposes of this article, the reports required by this section shall be  
15 considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely  
16 file the tax returns within five calendar days of the 16th day of each month also subjects a supplier,  
17 distributor, and direct shipper to penalties under §60-8-18 of this code.

18 No wine imported, sold, or distributed in this state or sold and shipped to this state by a  
19 direct shipper shall be subject to more than one liter tax.

**§60-8-6c. Winery and Farm Winery license to sell wine growlers and provide complimentary 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 manufactured  
7 in this state for the benefit of the citizens of this state, the state’s growing wine industry, and the  
8 state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

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

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

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

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

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

33           (g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code,  
34 “wine growler” means a container or jug that is made of glass, ceramic, metal, or other material  
35 approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable  
36 of being securely sealed. The growler may be used by an authorized licensee for purposes of off-  
37 premises sales only of wine for personal consumption, and not for resale. Notwithstanding any  
38 other provision of this code to the contrary, a securely sealed wine growler is not an open  
39 container under state and local law. A wine growler with a broken seal is an open container under  
40 state and local law unless it is located in an area of the motor vehicle physically separated from  
41 the passenger compartment. For purpose of this article, a secure seal means using a tamper  
42 evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the  
43 cap or lid of wine growler to form a seal that must be broken when the container is opened; or (2)  
44 A screw top cap or lid that breaks apart when the wine growler is opened.

45           (h) *Wine Growler requirements.* — A winery or farm winery licensed under this section  
46 shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine  
47 growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under  
48 this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed  
49 winery or farm winery under this section may refill a wine growler subject to the requirements of

50 this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling  
51 it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken,  
52 unsafe, or otherwise unfit to serve as a sealed beverage container.

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

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

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

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

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

**§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and  
breakfast, private wine spa, Class B retail dealer, private club restaurant, private  
manufacturer club, Class A retail licensee, and Class B retail licensee’s authority to  
sell wine growlers.**

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 wine retailer, wine specialty shop, private wine restaurant,  
6 private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer  
7 club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote  
8 the sale of wine manufactured in this state for the benefit of the citizens of this state, the state’s  
9 growing wine industry, and the state’s hospitality and tourism industry, all of which are vital  
10 components for the state’s economy.

11 (b) *Sales of wine.* — A licensed wine retailer, wine specialty shop, private wine restaurant,  
12 private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer  
13 club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this  
14 section and meets the requirements of this section may offer wine for retail sale to patrons from  
15 the licensed premises in a sealed wine growler for personal consumption off of the licensed  
16 premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification,  
17 that any patron purchasing wine is 21 years of age or over and that the patron is not visibly  
18 intoxicated. The nonprorated, nonrefundable annual fee to sell wine growlers is \$100.

19           (c) *Retail sales.* — Every licensee authorized under this section shall comply with all the  
20 provisions of this article as applicable to wine retailers when conducting sales of wine in a wine  
21 growler and is subject to all applicable requirements and penalties in this article.

22           (d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all  
23 taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required,  
24 and meet applicable licensing provisions as required by this chapter and by rule of the  
25 commissioner.

26           (e) *Advertising.* — A licensee authorized under this section may advertise a particular  
27 brand or brands of wine and the price of the wine, subject to state and federal requirements or  
28 restrictions. The advertisement may not encourage intemperance or target minors.

29           (f) *Wine Growler defined and requirements.* — A licensee authorized under this section  
30 shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

31           (g) *Wine Growler labeling and sanitation.* — A licensee authorized under this section shall  
32 label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

33           (h) *Complimentary samples.* — A licensee authorized under this section may provide  
34 complimentary wine growler samples to a person intending to purchase a wine growler which may  
35 be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall  
36 not exceed three complimentary two fluid ounce samples per patron per day. A licensee  
37 authorized under this section providing complimentary wine samples shall, prior to providing any  
38 samples, verify that the patron sampling wine is 21 years of age or older and that the patron is  
39 not visibly or noticeably intoxicated.

40           (i) *Limitations on licensees.* — A licensee under this section may only sell wine growlers  
41 during the hours of operation set forth in this article. Any licensee licensed under this section shall  
42 maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall  
43 only be accessible by the licensee. Any licensee licensed under this section is subject to the  
44 applicable penalties under this article for violations.

45 (j) *Non-applicability of certain statutes.* — Notwithstanding any other provision of this  
46 article to the contrary, licensees under this section are permitted to break the seal of the original  
47 container for the limited purpose of filling a wine growler or providing complimentary wine samples  
48 as provided in this section. Any unauthorized sale of wine or any consumption not permitted on  
49 the licensee's licensed premises is subject to penalties under this article.

50 (k) *Rules.* — The commissioner may propose legislative rules for legislative approval,  
51 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party;  
requirements; limitations; third party license fee; private retail transportation  
permit; and requirements.**

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

11 (b) A third party, not licensed for wine sales or distribution, may apply for a private wine  
12 delivery license for the privilege of ordering and delivery of wine in the original container of sealed  
13 bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order  
14 and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is  
15 permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing  
16 the wine through telephone orders, mobile ordering application, or web-based software program

17 for off-premises consumption. The private wine delivery license non-prorated, nonrefundable  
18 annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

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

21 (d) *Sale Requirements.* -

22 (1) The wine purchase shall accompany the purchase of prepared food or a meal and the  
23 completion of the sale may be accomplished by the delivery of prepared food or a meal, and  
24 sealed wine by the licensee or third-party licensee.

25 (2) Any purchasing person shall be 21 years of age or older, shall not be visibly or  
26 noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this  
27 article for the sale of wine.

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

32 (4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per  
33 delivery order; and

34 (5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class  
35 A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only  
36 charge a convenience fee for the delivery of wine as provided in this section. The third-party  
37 private wine delivery licensee may not collect a percentage of the delivery order for the delivery  
38 of alcohol but may collect a percentage of the delivery order directly related to prepared food or  
39 a meal. The convenience fee charged by the third-party private wine delivery licensee to the  
40 purchasing person may be no greater than five dollars per delivery order where wine is ordered  
41 by the purchasing person. For any third-party private wine delivery licensee also licensed for  
42 nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the

43 code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience  
44 fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler  
45 shall not exceed five dollars.

46 (e) *Private Wine Delivery Requirements.* -

47 (1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or  
48 older. The third-party private wine delivery licensee or a Class A wine licensee shall file each  
49 delivery person's name, driver's license, and vehicle information with the commissioner;

50 (2) The third-party private wine delivery licensee or the Class A wine licensee shall train  
51 delivery persons on verifying legal identification and in identifying the signs of intoxication. The  
52 third-party private wine delivery licensee shall submit certification of the training to the  
53 commissioner;

54 (3) The third party private wine delivery licensee or Class A wine licensee shall hold a  
55 retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this  
56 section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof  
57 of licensure;

58 (4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery  
59 licensee or Class A wine licensee may occur in the county or contiguous counties where the wine  
60 licensee is located;

61 (5) The third-party private wine delivery licensee or Class A wine licensee may only deliver  
62 prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party  
63 private wine delivery licensee or Class A wine licensee shall account for and pay all sales and  
64 municipal taxes;

65 (6) The third-party private wine delivery licensee or Class A wine licensee may not deliver  
66 prepared food or a meal, and sealed wine to any other wine licensees;

67 (7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for  
68 resale; and

69 (8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver  
70 and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a  
71 person's age and identification as required by this section.

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

73 (1) The delivery person shall only permit the person who placed the order through a  
74 telephone order, a mobile ordering application, or web-based software to accept the prepared  
75 food or meal, and wine delivery which is subject to age verification upon delivery with the delivery  
76 person's visual review and verification and, as applicable, a stored scanned image of the  
77 purchasing person's legal identification;

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

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

85 (4) All records are subject to inspection by the commissioner, and the third-party private  
86 wine delivery licensee and Class A wine licensee shall retain the records for inspection for three  
87 years. The third-party private wine delivery licensee or Class A wine licensee may not  
88 unreasonably withhold the records from the commissioner's inspection; and

89 (5) Each vehicle delivering wine shall be issued a private wine retail transportation permit  
90 per subsection (g) of this section.

91 (g) *Private Wine Retail Transportation Permit.* -

92 (1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and  
93 maintain a retail transportation permit for the delivery of prepared food and sealed wine.

94 (2) A Class A wine licensee or a third-party private wine delivery licensee shall provide  
95 vehicle and driver information, requested by the commissioner. Upon any change in vehicles or  
96 drivers, the licensee shall update the driver and vehicle information with the commissioner within  
97 10 days of the change.

98 (3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit  
99 shall meet the requirements of a transportation permit authorizing the permit holder to transport  
100 wine subject to the requirements of this chapter.

101 (h) *Enforcement.* -

102 (1) The licensee or the third-party private wine delivery licensee are responsible for any  
103 violations committed by their employees or independent contractors under this article, and more  
104 than one violation may be issued for a single violation involving multiple licensees, employees, or  
105 independent contractors.

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

109 (3) It is a violation for any licensee, its employees, or independent contractors to break  
110 the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this  
111 subdivision is subject to the maximum penalties available in this article.

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

**§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party;  
requirements; limitations; third party license fee; private retail transportation  
permit; and requirements.**

1 (a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may  
2 apply for a private wine delivery license permitting the order, sale, and delivery of wine in the

3 original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for  
4 wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles,  
5 cans, or sealed wine growlers is permitted for off-premises consumption when completed by the  
6 licensee or the licensee's employees to a person purchasing the wine through a telephone order,  
7 a mobile ordering application, or web-based software program, as authorized by the licensee's  
8 license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery  
9 license. The order, sale, and delivery process shall meet the requirements of this section, and  
10 subject to the penalties of this article.

11 (b) A third party, not licensed for wine sales or distribution, may apply for a private wine  
12 delivery license for the privilege of the ordering and delivery of wine in the original container of  
13 sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The  
14 order and delivery of wine in the original container of sealed bottles or cans, or sealed wine  
15 growlers is permitted for off-premises consumption by a third party licensee when sold by a Class  
16 B wine licensee to a person purchasing the wine through telephone orders, mobile ordering  
17 application, or web-based software program. The private wine delivery license non-prorated,  
18 nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and  
19 vehicles.

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

22 (d) *Sale Requirements.* -

23 (1) The wine purchase may accompany the purchase of food and the completion of the  
24 sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party  
25 private wine delivery licensee.

26 (2) Any purchasing person must be 21 years of age or older, shall not be visibly or  
27 noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this  
28 article for the sale of wine.

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

31 (4) An order, sale, or delivery consisting of food and any combination of sealed wine  
32 bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

33 (5) A third-party private wine delivery licensee shall not have a pecuniary interest in a  
34 Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may  
35 only charge a convenience fee for the delivery of wine. The third-party private wine delivery  
36 licensee may not collect a percentage of the delivery order for the delivery of alcohol but may  
37 collect a percentage of the delivery order directly related to food only. The convenience fee  
38 charged by the third-party private wine delivery licensee to the purchasing person shall be no  
39 greater than five dollars per delivery order where wine is ordered by the purchasing person. For  
40 any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer  
41 delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and  
42 delivery shall not exceed five dollars.

43 (e) *Private Wine Delivery Requirements.* -

44 (1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or  
45 older. The third-party private wine delivery licensee or a Class B wine licensee shall file each  
46 delivery person's name, driver's license, and vehicle information with the commissioner;

47 (2) The third-party private wine delivery licensee or Class B wine licensee shall train  
48 delivery persons on verifying legal identification and in identifying the signs of intoxication and  
49 certification. The third-party private wine delivery licensee or Class B wine licensee shall submit  
50 certification of the training to the commissioner;

51 (3) The third party delivery licensee or Class B wine licensee must hold a retail  
52 transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this  
53 section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof  
54 of licensure;

55 (4) The third-party private wine delivery licensee or Class B wine licensee may only deliver  
56 food and sealed wine orders by a third-party private wine delivery licensee or Class B wine  
57 licensee in the county where the wine licensee is located;

58 (5) The third-party private wine delivery licensee or Class B wine licensee may only deliver  
59 food and sealed wine to addresses located in West Virginia with all sales and municipal taxes  
60 accounted for and paid;

61 (6) A third-party private wine delivery licensee or Class B wine licensee may not deliver  
62 food and sealed wine to any other wine licensees;

63 (7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

64 (8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver  
65 and leave food and sealed wine at any address without verifying a person's age and identification  
66 as required by this section.

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

68 (1) The delivery person shall only permit the person who placed the order through a  
69 telephone, a mobile ordering application, or web-based software to accept the food and wine  
70 delivery which is subject to age verification upon delivery with the delivery person's visual review  
71 and verification and, as applicable, a stored scanned image of the purchasing person's legal  
72 identification;

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

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

80 (4) All records are subject to inspection by the commissioner. The third-party private wine  
81 delivery licensee or Class B wine licensee shall retain the records for inspection for three years.  
82 The third-party private wine delivery licensee or Class B wine licensee may not unreasonably  
83 withhold the records from the commissioner's inspection; and

84 (5) Each vehicle delivering wine shall be issued a private wine retail transportation permit  
85 under subsection (g) of this section.

86 (g) *Private Wine Retail Transportation Permit.* -

87 (1) A Class B wine licensee or third party private wine delivery licensee shall obtain and  
88 maintain a retail transportation permit for the delivery of food and wine.

89 (2) A Class B wine licensee or third party private wine delivery licensee shall provide  
90 vehicle and driver information requested by the commissioner. Upon any change in vehicles or  
91 drivers, the licensee shall update the driver and vehicle information with the commissioner within  
92 10 days of the change.

93 (3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit  
94 shall meet the requirements of a transportation permit authorizing the permit holder to transport  
95 wine subject to the requirements of this chapter.

96 (h) *Enforcement.* -

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

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

104 (3) It is a violation for any licensee, its employees, or independent contractors to break  
105 the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this  
106 subdivision is subject to the maximum penalties available in this article.

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

**§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the  
commissioner upon the licensee; procedure for appealing any final order of the  
commissioner which revokes, suspends, sanctions, or denies the issuance or  
renewal of any license issued under this article.**

1 (a) The commissioner may on his or her own motion, or shall on the sworn complaint of  
2 any person, conduct an investigation to determine if any provisions of this article or any rule  
3 promulgated or any order issued by the commissioner has been violated by any licensee. After  
4 investigation, the commissioner may impose penalties and sanctions as set forth in this section.

5 (1) If the commissioner finds that the licensee has violated any provision of this article or  
6 any rule promulgated or order issued by the commissioner, or if the commissioner finds the  
7 existence of any ground on which a license could have been refused, if the licensee were then  
8 applying for a license, the commissioner may:

9 (A) Revoke the licensee's license;

10 (B) Suspend the licensee's license for a period determined by the commissioner not to  
11 exceed 12 months;

12 (C) Place the licensee on probation for a period not to exceed 12 months; or

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

15 (2) If the commissioner finds that a licensee has willfully violated any provision of this  
16 article or any rule promulgated or any order issued by the commissioner, the commissioner shall  
17 revoke the licensee's license.

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(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a hearing shall give security for the cost of the hearing in a form and amount required by the commissioner. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections (f) and (g) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing, the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review.

(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

43 (f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee  
44 adversely affected by a final order entered following a hearing has the right to judicial review of  
45 the order code in the Circuit Court of Kanawha County or the circuit court in the county where the  
46 proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all  
47 other respects, the review shall be conducted in the manner provided in chapter 29A of this code.  
48 The applicant or licensee shall file the petition for the review with the circuit court within 30 days  
49 following entry of the final order issued by the commissioner. An applicant or licensee obtaining  
50 judicial review is required to pay the costs and fees incident to transcribing, certifying, and  
51 transmitting the records pertaining to the matter to circuit court.

52 (g) The judgment of the circuit court reviewing the order of the commissioner is final  
53 unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance  
54 with the provisions of §29A-6-1 of this code.

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

**§60-8-20. Unlawful acts generally.**

1 It is unlawful:

2 (a) For a supplier or distributor to sell or deliver wine purchased or acquired from any  
3 source other than a person registered under the provisions of §60-8-6 of this code or for a retailer  
4 to sell or deliver wine purchased or acquired from any source other than a licensed distributor or  
5 a farm winery as defined in §60-1-5a of this code;

6 (b) Unless otherwise specifically provided by the provisions of this article, for a licensee  
7 under this article to acquire, transport, possess for sale, or sell wine other than in the original  
8 package;

9 (c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to  
10 any person less than 21 years of age, or to a mentally incompetent person or person who is  
11 physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided,*  
12 That the provisions of section §60-3A-25a of this code shall apply to sales of wine;

13 (d) For a licensee to permit a person who is less than 18 years of age to sell, furnish or  
14 give wine to any person, except as provided for in subsection (g) of this section;

15 (e) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired  
16 from any source other than the primary source of supply of the wine which granted the distributor  
17 the right to sell the brand at wholesale. For the purposes of this article, "primary source of supply"  
18 means the vintner of the wine, the importer of a foreign wine who imports the wine into the United  
19 States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or  
20 an agent specifically authorized by any of the above-enumerated persons to make a sale of the  
21 wine to a West Virginia distributor: *Provided,* That no retailer shall sell or deliver wine purchased  
22 or acquired from any source other than a distributor or farm winery licensed in this state: *Provided,*  
23 *however,* That nothing herein is considered to prohibit sales of convenience between distributors  
24 licensed in this state wherein one distributor sells, transfers, or delivers to another distributor a  
25 particular brand or brands for sale at wholesale, of which brand or brands the other distributor has  
26 been authorized by a licensed supplier to distribute. The commissioner shall promulgate  
27 legislative rules necessary to carry out the provision of this subsection;

28 (f) For a person to violate any rule promulgated by the commissioner under this article;

29 (g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or  
30 be considered to prohibit any licensee from employing any person who is at least 18 years of age  
31 to serve in any licensee's lawful employment, including the sale of wine or distribution of wine on  
32 behalf of a winery, farm winery, farm entity, supplier, or distributor under the provisions of this  
33 article. With the prior approval of the commissioner, a licensee may employ persons who are less  
34 than 18 years of age but at least 16 years of age: *Provided,* That the person's duties may include

35 the sale of nonintoxicating beer or wine only when directly supervised by a person 21 years of  
36 age or older: *Provided, however,* That the authorization to employ persons under 18 years of age  
37 shall be clearly indicated on the licensee's license: *Provided, further,* That nothing in this article,  
38 nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any  
39 licensee from employing any person who is at least 21 years of age for the ordering and delivery  
40 of wine when licensed for the ordering and delivery of wine under the provisions of this article.

**§60-8-29. Affidavit of compliance required of distributors and suppliers.**

1 Each applicant for a distributor's license or a supplier's license shall furnish at the time of  
2 application an affidavit of compliance with federal and state laws regarding tied house laws, trade  
3 practice requirements, and furnishing things of value requirements set forth in the code and the  
4 rules. The commissioner shall suspend the licenses of licensed distributors and suppliers upon  
5 10 days written notice by the commissioner, for failing to pay their taxes to the Tax Commissioner  
6 or who are not otherwise in good standing with the commissioner and other state agencies. If the  
7 licensed distributors and suppliers fail to pay their taxes or otherwise fail to take corrective actions  
8 to put the licensed distributors and suppliers in good standing within 30 days from the date of  
9 suspension of the licensee's license, then the commissioner shall revoke the licensee's license  
10 pursuant to the requirements of this article.

**§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, and  
2 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 area.  
4 A temporary private wine outdoor street area shall be approved by the municipal government or  
5 county commission in which the licensee operates. The commissioner shall develop and make  
6 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 the  
8 approval of the private wine outdoor dining area or private wine outdoor street dining area and

9 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 and  
13 under the licensee's control and with right of ingress and egress. For purposes of this section,  
14 "close proximity," means an available area within 150 feet of the licensee's licensed premises.

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

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

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

23 (2) Open to the air; and

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

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

28 (e) Class A licensees licensed for on-premises sales shall provide food or a meal along  
29 with sealed wine in the original container or a sealed wine growler sales and service as set forth  
30 in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking  
31 up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, subject  
32 to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably  
33 intoxicated, and as otherwise specified in this article.

**§60-8-34. When retail sales prohibited.**

1           It is unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and  
2 breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents, or  
3 employees to sell or deliver wine between the hours of 2:00 a.m. and 6:00 a.m. or, it is unlawful  
4 for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine  
5 spa, his or her servants, agents, or employees to sell wine between the hours of 2:00 a.m. and  
6 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, or between the  
7 hours of 2:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays.

**ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.**

**§60-8A-1. Definition of Hard Cider.**

1           “Hard Cider” means a type of wine that is derived primarily from the fermentation of apples,  
2 pears, peaches, honey, or other fruit, or from apple, pear, peach, or other fruit juice concentrate  
3 and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at  
4 least one half of one percent and less than 12 and one half percent alcohol by volume; and is  
5 advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as  
6 a wine, wine product, or as a substitute for wine.

**§60-8A-2. Applicability of other laws and licenses.**

1           (a) Except as stated in this article, all wine licenses and other wine requirements set forth  
2 in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution,  
3 or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell  
4 wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons,  
5 and subject to the same limitations and conditions, as such license or legal right authorizes him  
6 or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged  
7 for the privilege of manufacturing, distributing, or selling hard cider.

8 (b) Except as stated in this article, all hard cider distributors are bound by all wine  
9 distribution requirements set forth in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code which  
10 shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard  
11 cider may distribute hard cider in the same manner and to the same persons, and subject to the  
12 same limitations and conditions, as a license or legal right would authorize him or her to distribute  
13 wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard  
14 cider.

**§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for  
failure to file returns; application of state tax law; rulemaking authority.**

1 (a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021,  
2 by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent  
3 to persons 21 years of age or older who reside in West Virginia from direct shippers, a tax of 22.6  
4 cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That  
5 wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on  
6 hard cider are eligible for the credits in this state against the tax on hard cider. In the case of a  
7 person who produces not more than 250,000 wine gallons of hard cider during the calendar year,  
8 there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine  
9 gallon on the first 100,000 wine gallons of hard cider which are removed during such year for  
10 consumption or sale and which have been produced at qualified facilities in the United States.  
11 That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced  
12 in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of  
13 this section, the term “wine gallon” means a United States gallon of liquid measure equivalent to  
14 the volume of 231 cubic inches. On lesser quantities, the tax shall be paid proportionately  
15 (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-  
16 hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from  
17 the liter tax established under §60-8-4 of this code.

18 (b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of  
19 any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the  
20 hard cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-  
21 12 of this code.

22 (c) Before the 16th day of each month thereafter, every winery, farm winery, supplier,  
23 distributor, and direct shipper shall make a written report under oath to the Tax Commissioner  
24 and the commissioner showing the identity of the purchasing person, the quantity, label, and  
25 alcoholic content of hard cider sold by the winery, farm winery, and supplier to West Virginia  
26 distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia  
27 during the preceding month and at the same time shall pay the tax imposed by this article on the  
28 hard cider sold to the distributor or to persons 21 years of age or older who reside in West Virginia  
29 during the preceding month to the Tax Commissioner.

30 The reports shall contain other information and be in the form required by the Tax  
31 Commissioner. For purposes of this article, the reports required by this section shall be  
32 considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely  
33 file the tax returns within five calendar days of the 16th day of each month subjects a winery, farm  
34 winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

35 (d) No hard cider imported, sold, or distributed in this state or sold and shipped to this  
36 state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

37 (e) *Administrative procedures.* — Each and every provision of the West Virginia Tax  
38 Procedure and Administration Act set forth in § 11-10-1 *et seq.* of this code, applies to the taxes  
39 imposed pursuant to this section, except as otherwise expressly provided in this article, with like  
40 effect as if that act were applicable only to the taxes imposed by this section and were set forth  
41 in extenso in this article.

42 (f) *Criminal penalties.* — Each and every provision of the West Virginia Tax Crimes and  
43 Penalties Act set forth in § 11-9-1 *et seq.* of this code applies to the taxes imposed pursuant to

44 this section with like effect as if that act were applicable only to the taxes imposed pursuant to  
45 this article and were set forth in extenso in this article.

46 (g) The Tax Commissioner may propose legislative rules for legislative approval, pursuant  
47 to §29A-3-1 *et seq.* of this code, to implement this section.

**§60-8A-4. Fruit sources; phase in; applications.**

1 (a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery  
2 attempting to manufacture hard cider may apply to the Agriculture Commissioner with a copy to  
3 the commissioner showing its inability to obtain 75 percent of the apples, pears, peaches, honey,  
4 or other fruits necessary to produce its hard cider from within this state. The Agriculture  
5 Commissioner may issue a permit to the applicant to import such fruit, honey, or fruit juice  
6 concentrate in an amount determined necessary by the Agriculture Commissioner to allow the  
7 farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

8 (b) The burden of proof is on the applicant to show that apples, pears, peaches, honey, or  
9 other fruits, of the type normally used by the licensee are not available from any other source  
10 within the State of West Virginia. The commissioner shall not consider an application for a permit  
11 under this section unless it is accompanied by written findings by the Agriculture Commissioner  
12 in support of the application.

13 (c) Notwithstanding any provision in §60-3-25 of this code, to the contrary, any permit  
14 issued under this section is effective for a period of up to three years: *Provided*, That the applicant  
15 files an annual statement of necessity, supported by written findings from the Agriculture  
16 Commissioner, with the commissioner. After the five-year permit issued pursuant to this section  
17 has expired, the applicant shall submit any subsequent application for a permit pursuant to §60-  
18 3-25 of this code.

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

1 (a) *Sales of hard cider.* — A licensed winery or farm winery with its principal place of  
2 business or manufacturing facility located in the State of West Virginia may offer hard cider

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

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

21 (c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply  
22 with all the provisions applicable to wine retailers when conducting sales of hard cider and is  
23 subject to all applicable requirements and penalties.

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

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

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

35           (g) *Fee*. — There is no additional fee for a licensed winery or farm winery authorized under  
36 §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard  
37 cider in the wine growler, and no other wine, then the annual nonprorated and nonrefundable  
38 license fee is \$50.

**§60-8A-6. Rule-making authorization.**

1           The West Virginia Alcoholic Beverage Control Commissioner may propose legislative  
2 rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this article.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.**

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

1           Any proprietor or any person in charge of a dance house, concert saloon, theater,  
2 museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors  
3 are sold or given away, or any place of entertainment injurious to health or morals who admits or  
4 permits to remain therein any minor under the age of 18 years, unless accompanied by his or her  
5 parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a  
6 fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private  
7 caterer, private club restaurant, private manufacturer club, private fair and festival, private resort  
8 hotel, private hotel, private golf club, private nine-hole golf course, private tennis club, private

9 wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-  
10 vendor fair and festival license, private farmers market, private professional sports stadium, and  
11 a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in compliance  
12 with §60-7-2(f)(11), §60-7-2(h)( 4), §60-7-2(i)( 8), §60-7-2(j)(7), §60-7-2(k)(8), §60-7-2(l)(8), §60-  
13 7-2(m)(7), §60-7-2(n)(7), §60-7-2(o)(8), §60-7-2(p)(8), §60-7-2(q)(12), §60-7-2 (r)(8), §60-7-  
14 2(s)(9), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a, of this code; or (b) a private club with more  
15 than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner,  
16 that has been approved by the Alcohol Beverage Control Commissioner; and which has  
17 designated certain seating areas on its licensed premises as nonalcoholic liquor and  
18 nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or  
19 identification program by which all members or guests being served or sold alcoholic liquors,  
20 nonintoxicating beer, or nonintoxicating craft beer are asked and required to provide their proper  
21 identification to verify their identity and further that they are of legal drinking age, 21 years of age  
22 or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating  
23 craft beer.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect May 10, 2021.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

.....  
*Governor*