

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 426**

BY SENATORS TRUMP, WELD, AND BOSO

[Originating in the Committee on the Judiciary;

Reported on February 22, 2018]

1 A BILL to repeal §7-1-3ss of the Code of West Virginia, 1931, as amended; to amend and reenact  
2 §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-9, and §11-16-18 of said code; to  
3 amend said code by adding thereto a new section, designated §11-16-11b; to amend and  
4 reenact §60-1-5a of said code; to amend said code by adding thereto a new section,  
5 designated §60-2-17a; to amend and reenact §60-3-12 of said code; to amend and  
6 reenact §60-3A-18 and §60-3A-25 of said code; to amend and reenact §60-4-3a and §60-  
7 4-3b of said code; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to  
8 amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, §60-7-12, and §60-7-13  
9 of said code; to amend said code by adding thereto a new section, designated §60-7-8a;  
10 to amend and reenact §60-8-3, §60-8-20, and §60-8-34 of said code; and to amend and  
11 reenact §61-8-27 of said code, all relating generally to modernizing certain nonintoxicating  
12 beer, nonintoxicating craft beer, beer, wine, and liquor laws by permitting certain hours of  
13 operation; defining terms; repealing section of the code authorizing county option elections  
14 on Sunday sales; defining terms; removing the two growler limit per patron per day for  
15 licensees who sell growlers for off- premises consumption; increasing allowable growler  
16 size to 128 ounces; creating a sampling license for retailers authorized to sell growlers  
17 and setting a fee for the license; placing limitations on complimentary samples; requiring  
18 complimentary food be available; setting forth age restrictions; placing restrictions on  
19 licensed representatives of a brewer, resident brewer, or distributor who attend sampling  
20 events; creating a temporary license for nonintoxicating beer floorplan extensions of  
21 existing licensee floorplans; implementing a fee for the new license; implementing a  
22 reactivation fee for licensees that fail to timely file their renewal applications and pay their  
23 license fees; creating a one-day special license for certain nonprofit and tax exempt  
24 entities hosting artistic, athletic, charitable, educational, or religious events to purchase  
25 and sell nonintoxicating beer and nonintoxicating craft beer; providing limitations on  
26 special licenses; setting forth requirements for special licenses; setting forth the

27 commissioner's authority; reducing the membership requirement for a private golf club;  
28 creating alternating wine proprietorships for wineries and farm wineries; setting forth  
29 requirements for the parties to the alternating wine proprietorship agreements; setting forth  
30 production standards, including amount of raw West Virginia products which are required  
31 to be used; licensure requirements; clarifying that the Alcohol Beverage Control  
32 Administration may request the assistance of county and municipal law enforcement;  
33 clarifying days and hours for liquor sales; permitting a distillery or mini-distillery to apply,  
34 pay the fee, and qualify for a Class A private club license; clarifying types of sales  
35 permitted by a distillery or mini-distillery; providing a 5 percent markup rate for mini-  
36 distilleries for sampling; declaring that the mere addition of a mini-distillery does not  
37 change the nature or use of agricultural property for building code and property tax  
38 classification purposes; clarifying sampling procedures and requirements for wineries and  
39 farm wineries; prohibiting the adulteration of any alcoholic liquor by adding liquid designed  
40 to increase alcohol content or potency; permitting certain charitable events to auction wine  
41 bottles for off-premises consumption; penalties; clarifying that certain West Virginia  
42 licensees can only sell liquor by the drink; clarifying certain requirements for licensure;  
43 clarifying prohibition on liquor bottle sales in Class A licenses; providing guidance on  
44 certain lawful conduct such as wine bottle sales and frozen drink machines, and prohibiting  
45 the sale of premixed alcoholic liquors, with certain exceptions; creating a private club and  
46 carryout license with attendant requirements therefor; permitting the sale of wine in  
47 Division II and III college stadiums; creating a private fair and festival license; setting forth  
48 qualifications for applicants; placing limitations on complimentary samples; reducing  
49 membership requirement for a private golf club; requiring complimentary food be available;  
50 setting forth age restrictions; placing restrictions on licensed representatives of a brewer,  
51 resident brewer, or distributor who attends or operates sampling events; clarifying that  
52 private resort hotel licensees may operate a resident brewer and brew pub; authorizing

53 issuance of private club and carryout licenses and establishing criteria and setting a fee  
54 therefor; authorizing issuance of private hotel licenses and establishing criteria and fees  
55 therefor; setting forth qualifications for applicants; setting a license fee; permitting minors  
56 to attend private fairs or festivals under certain conditions; requiring a private club licensee  
57 to timely notify emergency medical services or law enforcement of a life-threatening  
58 medical emergency occurring on the licensee's premises; authorizing sanctions against  
59 licensees failing to notify such personnel as required; requiring a licensee to notify the  
60 Alcohol Beverage Control Administration within 48 hours of the occurrence of a life-  
61 threatening emergency; clarifying prohibition against bring your own bottle with exceptions  
62 for wine under certain circumstances; directing the commissioner to propose rules for  
63 allowing patrons to bring wine into licensed premises and restaurant facilities with an  
64 allowance for a corkage fee; stating that any such rule shall not take effect until approved  
65 by the Legislature; permitting the commissioner to sanction a licensee for failing to comply  
66 with the 48-hour notification requirement; providing examples of life-threatening medical  
67 emergencies; authorizing the promulgation of emergency rules; and requiring  
68 promulgation of proposed legislative rules.

*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 allowing nonintoxicating beer, wine, or alcoholic  
liquors to be sold, given, or dispensed after 10:00 a. m. on Sundays.**

1 [Repealed.]

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-3. Definitions.**

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

2 (1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed,  
3 concocted, blended, bottled or otherwise produced, ~~or~~ imported, or trans-shipped by a brewer or  
4 manufacturer, the labels of which have been registered and approved by the commissioner that  
5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid  
6 franchise agreement or a valid amendment ~~thereto~~ to the franchise agreement.

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

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

16 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a  
17 freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a  
19 mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

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

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating  
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place  
24 of business ~~shall be~~ is within this state. For purposes of a distributor only, the term "person" means  
25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,  
26 association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a

27 distributor licensee, and the trustee or other persons in active control of the activities of the trust  
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the  
29 distributor license that are unlawful acts or violations of §11-11-1 *et seq.* of this code,  
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

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

48 (9) "Franchise distributor network" means the distributors who have entered into a binding  
49 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating  
50 beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may  
51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the  
52 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale

53 from a selling brewer as specified in §11-16-21(a)(2) of this code, shall continue to maintain and  
54 be bound by the selling brewer's separate franchise distributor's network for any of its existing  
55 brands, line extensions, and new brands.

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

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other  
60 material approved by the commissioner, that may be only 32 or 64 fluid ounces in size and must  
61 be capable of being securely sealed. The growler is ~~utilized~~ used by an authorized licensee for  
62 purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for  
63 personal consumption, not on a licensed premise and not for resale. Notwithstanding any other  
64 provision of this code to the contrary, a securely sealed growler is not an open container under  
65 federal, state, and local law. A growler with a broken seal is an open container under federal,  
66 state, and local law unless it is located in an area of the motor vehicle physically separated from  
67 the passenger compartment. The secure sealing of a growler requires the use of a tamper-  
68 resistant seal, security tape, or other material, ~~as~~ approved by the commissioner, placed on or  
69 over the growler's opening, which seal, security tape, or other material is clearly marked with the  
70 date of the secure sealing by the authorized licensee who is selling the growler.

71 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand  
72 or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale  
73 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or  
74 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent  
75 entities, contracted entities, affiliated entities, or other related entities. In determining whether a  
76 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited  
77 to, the following factors: Name or partial name; trade name or partial trade name; logos;  
78 copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

79 (13) "Nonintoxicating beer" means all natural cereal malt beverages or products of the  
80 brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and  
81 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft  
82 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing  
83 at least one half of one percent alcohol by volume, but not more than 9.6 percent of alcohol by  
84 weight, or 12 percent by volume, whichever is greater. The word "liquor" as used in chapter 60 of  
85 this code, does not include or embrace nonintoxicating beer nor any of the beverages, products,  
86 mixtures, or preparations included within this definition.

87 (14) "Nonintoxicating beer floor plan extension" means a temporary one-day extension of  
88 an existing Class A licensee's floor plan to a contiguous, adjoining, and bounded area, such as a  
89 parking lot or outdoor area, which shall, for the temporary period, constitute a part of the licensee's  
90 licensed premises. The licensee's request for the nonintoxicating beer floor plan extension shall  
91 be endorsed or approved by the county or municipality where the licensee's licensed premises is  
92 located. The licensee shall be in good standing with the commissioner. The temporary event shall  
93 cease on or before midnight of the approved one-day event.

94 ~~(14)~~ (15) "Nonintoxicating beer sampling event" means an event approved by the  
95 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized  
96 pursuant to §11-16-11a of this code.

97 ~~(15)~~ (16) "Nonintoxicating beer sampling day" means any days and hours of the week  
98 where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-  
99 18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating  
100 beer sampling event.

101 ~~(16)~~ (17) "Nonintoxicating craft beer" means any beverage obtained by the natural  
102 fermentation of barley, malt, hops, or any other similar product or substitute and containing not  
103 less than one-half of one percent by volume and not more than 12 percent alcohol by volume or  
104 9.6 percent alcohol by weight with no caffeine infusion or any additives masking or altering the



105 alcohol effect.

106 ~~(47)~~ (18) "Original container" means the container used by a resident brewer or brewer at  
107 the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or  
108 nonintoxicating craft beer for sale at wholesale.

109 ~~(48)~~ (19) "Person" means and includes an individual, firm, partnership, limited partnership,  
110 limited liability company, association, or corporation.

111 ~~(49)~~ (20) "Private club" means a license issued pursuant to §60-7-1 *et seq.* of this code.

112 ~~(20)~~ (21) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or  
113 nonintoxicating craft beer whose principal place of business and manufacture is located in the  
114 State of West Virginia and which does not brew or manufacture more than 25,000 barrels of  
115 nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than  
116 10,000 barrels ~~thereof~~ of nonintoxicating beer or nonintoxicating craft beer in the State of West  
117 Virginia annually. An owner of a licensed private resort hotel may apply, qualify, pay all fees, and  
118 operate under the code as a resident brewer.

119 ~~(24)~~ (22) "Retailer" means any person selling, serving, or otherwise dispensing  
120 nonintoxicating beer and all products regulated by this article, including, but not limited to, malt  
121 coolers at his or her established and licensed place of business.

122 ~~(22)~~ (23) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia  
123 or the commissioner's designee.

**§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.**

1 ~~No~~ A person shall not manufacture, sell, possess for sale, serve, tender, transport, or  
2 distribute nonintoxicating beer except in accordance with the provisions of this article, and after  
3 first obtaining a state license therefor, as provided in this article. Nothing contained in this article  
4 shall prohibit any brewer located within the state from manufacturing or transporting for sale  
5 without the state beer of an alcoholic strength greater than that of nonintoxicating beer.

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

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

11           (b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal  
12 place of business and manufacture located in the State of West Virginia may offer only  
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident  
14 brewer for retail sale to customers from the brewer’s or resident brewer’s licensed premises for  
15 consumption off the licensed premises only in the form of kegs, bottles, cans, or growlers for  
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give  
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business  
18 and manufacture located in the State of West Virginia, except for the limited purpose of  
19 complimentary samples as permitted in §11-16-6a(c) of this code.

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

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

30 (d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall  
31 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when  
32 conducting sales of nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all  
33 applicable requirements and penalties in this article.

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

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

43 (g) *Growler requirements.* — A licensed brewer or resident brewer under this section must  
44 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed  
45 brewer or resident brewer under this section ~~must~~ shall sanitize, fill, securely seal, and label any  
46 growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for  
47 retail sale ~~up to two~~ 128-ounce, 64-ounce, or ~~four~~ 32-ounce, growlers of nonintoxicating beer or  
48 nonintoxicating craft beer manufactured by the licensed brewer or resident brewer ~~per customer~~  
49 ~~per day~~ for personal consumption off of the licensed premises and not for resale. A licensed  
50 brewer or resident brewer under this section may refill a growler subject to the requirements of

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

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

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

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

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

77 (l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health  
78 concerning sanitation, ~~is authorized to~~ may propose rules for legislative approval, pursuant to  
79 §29A-3-1 *et seq.* of this code, to implement this section.

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, and Class B retail licensee’s authority to sell 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 nonintoxicating beer and nonintoxicating craft beer and its industry  
4 in this state in order to protect the public health, welfare, and safety of the citizens of this state  
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class  
6 A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee  
7 to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating  
8 craft beer manufactured in this state for the benefit of the citizens of this state, the state’s growing  
9 brewing industry, and the state’s hospitality and tourism industry, all of which are vital components  
10 for the state’s economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewpub, Class A retail dealer, Class B  
12 retail dealer, private club, Class A retail licensee, or Class B retail licensee who pays the fee in  
13 §11-16-6b(i) of this code and meets the requirements of this section may offer nonintoxicating  
14 beer or nonintoxicating craft beer for retail sale to patrons from ~~their~~ its licensed premises in a  
15 growler for personal consumption only off of the licensed premises and not for resale. Prior to the  
16 sale, the licensee shall verify, using proper identification, that any patron purchasing  
17 nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is  
18 not visibly intoxicated. A licensee authorized under this section may not sell, give, or furnish  
19 alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private  
20 club licensed to sell sealed wine for consumption off of the licensed premises and meets the  
21 requirements set out in ~~subdivisions~~ §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine,

22 not liquor.

23 (c) *Retail sales.* — Every licensee authorized under this section shall comply with all the  
24 provisions of this article ~~as~~ applicable to nonintoxicating beer retailers when conducting sales of  
25 nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all applicable  
26 requirements and penalties in this article.

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

31 (e) *Advertising.* — A licensee authorized under this section may advertise a particular  
32 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the  
33 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or  
34 restrictions. The advertisement may not encourage intemperance.

35 (f) *Growler requirements.* — A licensee authorized under this section must fill a growler  
36 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized  
37 under this section ~~must~~ shall sanitize, fill, securely seal, and label any growler prior to its sale. A  
38 licensee authorized under this section may only offer for retail sale ~~up to two~~ 128 ounce 64-ounce,  
39 ~~or four~~ 32-ounce, growlers of nonintoxicating beer or nonintoxicating craft beer ~~per customer per~~  
40 ~~day~~ for personal consumption off of the licensed premises and not for resale. A licensee under  
41 this section may refill a growler subject to the requirements of this section. A licensee shall visually  
42 inspect any growler before filling or refilling it. A licensee may not fill or refill any growler that  
43 appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

44 (g) *Growler labeling.* — A licensee authorized under this section selling growlers shall affix  
45 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee  
46 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the  
47 growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in

48 the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler  
49 shall be consistent with all federal labeling and warning requirements.

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

56 (i) ~~Fees.~~ - ~~Commencing July 1, 2015, and by~~ On every July 1 thereafter, there is an annual  
57 \$100 nonrefundable non-prorated fee for a licensee, except for a licensed brewpub, to sell  
58 growlers as provided by this section. The licensee must be in good standing with the state at the  
59 time of paying the fee. Commencing July 1, 2018, and every July 1 thereafter, there is an  
60 additional annual nonrefundable and non-prorated fee of \$100, except for a licensed brewpub, a  
61 Class A retail dealer, or a private club which are permitted by their license to conduct on premises  
62 sales of nonintoxicating beer or nonintoxicating craft beer samples, for a growler sampling license  
63 to permit complimentary nonintoxicating beer or nonintoxicating craft beer sampling to be served  
64 prior to the purchase of a growler as set forth in §11-16-6b(l) of this code.

65 (j) *Limitations on licensees.* — A licensee under this section may only sell growlers during  
66 the hours of operation set forth in ~~subdivision~~ §11-16-18(a)(1) of this code. Any licensee licensed  
67 under this section ~~must~~ shall maintain a secure area for the sale of nonintoxicating beer or  
68 nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee.  
69 Any licensee licensed under this section ~~shall be~~ is subject to the applicable penalties under §11-  
70 16-23 of this code.

71 (k) *Nonapplicability of certain statutes.* — Notwithstanding any other provision of this code,  
72 to the contrary, licensees under this section are permitted to break the seal of the original  
73 container for the limited purpose of filling a growler as provided in this section or for those

74 licensees obtaining a nonintoxicating beer or nonintoxicating craft beer growler sampling license  
75 for the limited purpose of providing samples in limited quantities to appropriate patrons. Any  
76 unauthorized sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not  
77 permitted on the licensee's licensed premises is subject to penalties under this article.

78 (l) Complimentary samples. — A licensee authorized under this section, who has obtained  
79 the nonintoxicating beer or nonintoxicating craft beer growler sampling license may only offer  
80 complimentary samples to appropriate patrons. The complimentary samples may be no greater  
81 than a one-ounce per sample per patron, and a sampling may not exceed three complimentary  
82 one-ounce samples per patron per day. A licensee authorized under this section, who has  
83 obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license providing  
84 complimentary samples shall provide complimentary food items to the patron consuming the  
85 complimentary samples; and prior to any sampling, verify, using proper identification, that the  
86 patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. A licensee  
87 authorized under this section, who has obtained the nonintoxicating beer or nonintoxicating craft  
88 beer growler sampling license may only have its employees who are 21 years of age or over  
89 provide the complimentary samples to patrons. Licensed representatives of a brewer, resident  
90 brewer, or distributor may attend a sampling event held at the licensed premises of a licensee  
91 authorized under this section and who has obtained the nonintoxicating beer or nonintoxicating  
92 craft beer growler sampling license; however, they may not provide, furnish, serve, or sell any  
93 nonintoxicating beer or nonintoxicating craft beer and may only speak about the product that they  
94 represent and that is being sampled. Any nonintoxicating beer or nonintoxicating craft beer must  
95 be furnished by the licensee authorized under this section, who has obtained the nonintoxicating  
96 beer or nonintoxicating craft beer growler sampling license from its own purchased inventory, with  
97 all taxes and fees paid on such beer, and may not be given or furnished by a brewer, resident  
98 brewer, or distributor. In no event, shall a licensee authorized under this section, who has obtained  
99 the nonintoxicating beer or nonintoxicating craft beer growler sampling license, permit any patron



100 to consume nonintoxicating beer or nonintoxicating craft beer from a growler or poured from a  
101 growler; such action shall result in the immediate suspension of the licensee's license.

102 (m) Rules. — The commissioner ~~is authorized to~~ may propose rules for legislative  
103 approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§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. A licensee that  
6 fails to complete a renewal application and make payment of its annual license fee in renewing  
7 its license on or before June 30 of any subsequent year, after initial application, shall be charged  
8 an additional \$150 reactivation fee. The reactivation fee may not be prorated or refunded and  
9 must be paid prior to or contemporaneously with any renewal application and applicable full year  
10 annual license fee. A licensee who continues to operate upon 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 having 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 licenses authorize the licensee to sell nonintoxicating beer at retail for consumption  
23 on or off the licensed premises.

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

30 A Class B license may be issued only to the proprietor or owner of a grocery store. For  
31 the purpose of this article, the term "grocery store" means any retail establishment commonly  
32 known as a grocery store or delicatessen, and caterer or party supply store, where food or food  
33 products are sold for consumption off the premises, and which includes a separate and  
34 segregated portion of any other retail store which is dedicated solely to the sale of food, food  
35 products, and supplies for the table for consumption off the premises. Caterers or party supply  
36 stores are required to purchase the appropriate licenses from the Alcohol Beverage Control  
37 Administration.

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

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

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

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

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

47 (4) For a brewer whose principal place of business or manufacture is not located in this  
48 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in §11-16-  
49 9(c), §11-16-9(d), and §11-16-9(e) of this code: *Provided*, That a brewer whose principal place of  
50 business or manufacture is not located in this state that produces less than 25,000 barrels of  
51 nonintoxicating beer or nonintoxicating craft beer may choose to apply in writing to the  
52 commissioner to be subject to the variable license fees of §11-16-9(b)(3) of this code and the  
53 requirements set out in §11-16-9(c), §11-16-9(d), and §11-16-9(e) of this code subject to  
54 investigation and approval by the commissioner as to brewer requirements.

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

56 (c) As part of the application or renewal application and in order to determine a brewer or  
57 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide  
58 the commissioner, on a form provided by the commissioner, with an estimate of the number of  
59 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the  
60 year based upon the production capacity of the brewer's or resident brewer's manufacturing  
61 facilities, and the prior year's production and sales volume of nonintoxicating beer or  
62 nonintoxicating craft beer.

63 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a  
64 license shall file a final report, on a form provided by the commissioner, that is dated as of June  
65 30 of ~~each~~ that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft  
66 beer in barrels and gallons produced at its principal place of business and manufacture during  
67 the prior year.

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

73 (f) Any brewer or resident brewer failing to file the reports required in §11-16-9(c) and §11-  
74 16-9(d) of this code, and who is not exempt from the reporting requirements, shall, at the  
75 discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

76 (g) Notwithstanding §11-16-9(a) and §11-16-9(b) of this code, the license fee per event  
77 for a nonintoxicating beer floor plan extension is \$100. The fee may not be prorated or refunded.  
78 The fee must be accompanied with a license application and certification that the event meets  
79 certain requirements in the code and rules, and other information the commissioner may  
80 reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

**§11-16-11b. Special license for one-day charitable events; application; license subject to provisions of article; exception.**

1 (1) The commissioner may issue a special one-day license to be designated a Class S1  
2 license for the retail sale of nonintoxicating beer and nonintoxicating craft beer to a duly-organized  
3 nonprofit corporation, limited liability entity, or an association having received federal tax exempt  
4 status allowing the sale and serving of nonintoxicating beer or nonintoxicating craft beer when  
5 raising money for artistic, athletic, charitable, educational, or religious purposes. The  
6 commissioner may not charge a fee to the applicant that meets requirements for licensure. The  
7 special license shall be issued for a term no longer than one day. No more than 10 licenses may  
8 be issued to any single licensee during any calendar year. The license application shall contain a  
9 copy of the documents showing approved federal tax exempt status and other information  
10 required by the commissioner and shall be submitted to the commissioner at least 15 days prior  
11 to the event. Nonintoxicating beer served and sold during the event shall be purchased from a  
12 licensed retailer, distributor, or resident brewer that services the location where the festival, fair,  
13 or other event is occurring. Licensed representatives of distributors, brewers, or resident brewers  
14 may attend the one-day event and discuss their products, but may not engage in the serving or  
15 selling of the nonintoxicating beer or nonintoxicating craft beer. A licensee licensed by this section  
16 may use bona fide employees or volunteers of the charitable entity.

17 (2) A license issued under the provisions of this section and the licensee holding the  
18 license are subject to all other provisions of this article and the rules and orders of the  
19 commissioner relating to the special license: *Provided*, That the commissioner may by rule or  
20 order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the  
21 circumstances of each event requires, including, without limitation, the right to revoke or suspend  
22 any license issued pursuant to this section prior to any notice or hearing notwithstanding the  
23 provisions of §11-16-24 of this code: *Provided, however*, That under no circumstances may the  
24 provisions §11-16-18(a) (1), §11-16-18(a)(2), or §11-16-18(a)(3) of this code, be waived or an  
25 exception granted with respect to those provisions.

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

1 (a) It shall be is unlawful:  
2 (1) For any licensee, his, her, its or their servants, agents or employees to sell, give, or  
3 dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms  
4 directly connected, nonintoxicating beer or cooler on weekdays between the hours of ~~two o'clock~~  
5 2:00 a. m. and seven o'clock 7:00 a. m., ~~or between the hours of two o'clock a. m. and one o'clock~~  
6 ~~p. m., or a Class A retail dealer who sells nonintoxicating beer for on premises consumption only~~  
7 ~~between the hours of two o'clock 2:00 a. m. and ten o'clock 10:00 a. m. in any county upon~~  
8 ~~approval as provided for in section three pp, article one, chapter seven of this code, on any~~  
9 ~~Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty §60-~~  
10 ~~7-1 et seq. of this code, where the hours shall conform with the hours of sale of alcoholic liquors;~~  
11 (2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or  
12 give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably  
13 intoxicated or to any person known to be insane or known to be a habitual drunkard;  
14 (3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or  
15 give any nonintoxicating beer as defined in this article to any person who is less than ~~twenty-one~~  
16 21 years of age;

17 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any  
18 nonintoxicating beer as defined in this article, except for cash and ~~no~~ a right of action shall not  
19 exist to collect any claims for credit extended contrary to the provisions of this subdivision.  
20 Nothing ~~herein~~ contained in this section prohibits a licensee from crediting to a purchaser the  
21 actual price charged for packages or containers returned by the original purchaser as a credit on  
22 any sale, or from refunding to any purchaser the amount paid or deposited for the containers  
23 when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer  
24 of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount  
25 for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer  
26 and the distributor shall initiate the transfer no later than 12:00 p. m. of one business day after the  
27 delivery;

28 (5) For any brewer, distributor, or brew-pub, or his, her, its or their agents to transport or  
29 deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

30 (6) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs  
31 or supplies, directly or indirectly, or through a subsidiary or affiliate, to any licensee engaged in  
32 selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar  
33 inducement, except advertising matter of nominal value, to either trade or consumer buyers:  
34 *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing ~~herein~~  
35 contained in this section prohibits a brewer from sponsoring any professional or amateur athletic  
36 event or from providing prizes or awards for participants and winners in any events: *Provided*,  
37 *however*, That ~~no~~ an event shall not be sponsored which permits actual participation by athletes  
38 or other persons who are minors, unless specifically authorized by the commissioner;

39 (7) For any licensee to permit in his or her premises any lewd, immoral, or improper  
40 entertainment, conduct or practice;

41 (8) For any licensee, except the holder of a license, to operate a private club issued under  
42 the provisions of §60-7-1 *et seq.* of this code, or a holder of a license or a private wine restaurant

43 issued under the provisions of §60-8-1 *et seq.* of this code, to possess a federal license, tax  
44 receipt or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic  
45 drinks other than nonintoxicating beer;

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

52 (10) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in  
53 the sale, possession, or consumption of any alcoholic liquors on the premises covered by a  
54 license or on premises directly or indirectly used in connection with it: *Provided,* That the  
55 prohibition contained in this subdivision with respect to the selling or possessing or to the  
56 acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with  
57 respect to the holder of a license to operate a private club issued under the provisions of §60-7-  
58 1 *et seq.* of this code, nor shall the prohibition be applicable to a private wine restaurant licensed  
59 under the provisions of §60-8-1 *et seq.* of this code, insofar as the private wine restaurant is  
60 authorized to serve wine;

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

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

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

72 (14) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating  
73 beer except in the original container;

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

76 (16) For any Class B retailer to permit the consumption of nonintoxicating beer upon ~~his~~  
77 ~~or her~~ its licensed premises;

78 (17) For any Class A licensee, his, her, its or their servants, agents or employees, or for  
79 any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any  
80 person less than ~~eighteen~~ 18 years of age to loiter in or upon any licensed premises; except,  
81 ~~however,~~ that the provisions of this subdivision do not apply where a person under the age of  
82 ~~eighteen~~ 18 years is in or upon the premises in the immediate company of his or her parent or  
83 parents, or where and while a person under the age of 18 years is in or upon the premises for the  
84 purpose of and actually making a lawful purchase of any items or commodities ~~therein~~ sold upon  
85 the premises, or for the purchase of and actually receiving any lawful service ~~therein~~ rendered  
86 upon the premises, including the consumption of any item of food, drink, or soft drink ~~therein~~  
87 lawfully prepared and served or sold for consumption on the premises;

88 (18) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer  
89 outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating  
90 beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose  
91 principal place of business or licensed premises is within the assigned territory of another  
92 distributor of such nonintoxicating beer: *Provided*, That nothing in this section is considered to  
93 prohibit sales of convenience between distributors licensed in this state where one distributor



94 sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale;  
95 and

96 (19) For any licensee or any agent, servant, or employee of any licensee to knowingly  
97 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of  
98 §29A-3-1 *et seq.* of this code.

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

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

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

111 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of  
112 any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the  
113 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those  
114 set forth in §11-16-18(b) of this code; (ii) any administrative penalties from the commissioner; or  
115 (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating  
116 beer to an individual who is less than 21 years of age by one of his or her employees, servants,  
117 or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away  
118 nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties  
119 of §11-16-18(b) of this code. Any agent, servant, or employee who has improperly sold, furnished

120 or given away nonintoxicating beer to an individual less than 21 is subject to termination from  
121 employment, and the employer shall have no civil liability for the termination.

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

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

135 (d) Nothing in this article nor any rule ~~or regulation~~ of the commissioner shall prevent or  
136 be considered to prohibit any licensee from employing any person who is at least 18 years of age  
137 to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as  
138 defined in this article. With the prior approval of the commissioner, a licensee whose principal  
139 business is the sale of food or consumer goods or the providing of recreational activities, including,  
140 but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling  
141 alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons  
142 who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties  
143 may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided*,  
144 *however*, That the authorization to employ persons under the age of 18 years shall be clearly  
145 indicated on the licensee's license.

## 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 and nonfortified dessert wine are manufactured exclusively  
3 by natural fermentation from grapes, other fruits, or honey, or other agricultural products  
4 containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25  
5 percent of ~~such~~ the raw products being produced by the owner of ~~such~~ the farm winery on the  
6 premises of that establishment and no more than 25 percent of ~~such~~ the produce originating from  
7 any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a  
8 farm winery must not exceed an alcoholic content of 22 percent alcohol by volume and shall be  
9 matured in wooden barrels or casks.

10           (b) Notwithstanding the provisions of §60-1-5a(a) of this code, a farm winery may include  
11 one off-farm location. The owner of a farm winery may provide to the commissioner evidence,  
12 accompanied by written findings by the West Virginia Agriculture Commissioner in support  
13 thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit  
14 plants. The commissioner may grant permission for one off-farm location in an amount equal to  
15 that reasonably expected to be produced when the nonbearing fruit plants planted on the farm  
16 winery come into full production. The length of time of the permission to use an off-farm location  
17 shall be determined by the commissioner after consultation with the Agriculture Commissioner.

18           (c) Notwithstanding the provisions of §60-1-5a(a) of this code, a licensed farm winery that  
19 meets the requirements in this chapter and who is in good standing with the state may enter into  
20 an alternating wine proprietorship agreement with the owner of a farm located in West Virginia to  
21 rent or lease wine production facilities, equipment, and space, including a separately bonded wine  
22 area at the existing licensed farm winery's premises. The owner of a farm located in West Virginia

23 entering the alternating wine proprietorship agreement must be currently producing grapes, other  
24 fruits, or honey, or other agricultural products containing sugar as certified by the West Virginia  
25 Agriculture Commissioner at his or her farm located in West Virginia. The owner of a farm located  
26 in West Virginia renting or leasing wine production facilities, equipment, and space, as a tenant  
27 of a licensed farm winery must separately meet federal requirements and state requirements for  
28 a winery or farm winery and qualify and obtain such licensure. Further, wine produced by any of  
29 the parties to an alternating wine proprietorship agreement may not be commingled, and also the  
30 wine must be maintained in separate bonded areas and storage that is sanitary. The parties to an  
31 alternating wine proprietorship agreement shall maintain separate businesses, produce wine  
32 separately from each entity, and shall not assist the other parties. The owner of a farm located in  
33 West Virginia that is a party to an alternating wine proprietorship agreement may only produce, in  
34 any year, 50,000 gallons or less of wine and nonfortified dessert wine manufactured exclusively  
35 by natural fermentation from grapes, other fruits, or honey, or other agricultural products  
36 containing sugar; allowing port, sherry, and Madeira wine to be manufactured by such farm owner  
37 within the all gallonage limit, with 25 percent of the raw products being produced by the owner of  
38 the farm on his or her farm location premises in West Virginia and no more than 25 percent of the  
39 produce originating from any source outside this state. Any port, sherry, or Madeira wine  
40 manufactured by a licensed winery, farm winery or farm with a validly entered alternating wine  
41 proprietorship agreement may not exceed an alcoholic content of 22 percent alcohol by volume  
42 and shall be matured in wooden barrels or casks. A farm and farm owner that is a party to an  
43 alternating wine proprietorship agreement and licensed pursuant to this subsection shall obtain  
44 licensure as a farm winery and shall meet the same requirements in the code and the rules. A  
45 licensed farm winery may enter into multiple alternating wine proprietorship agreements with  
46 separate owners of farms located in West Virginia subject to the requirements of the code and  
47 the rules, and must also have the requisite production facilities, equipment, and space to safely  
48 produce wine for all parties.

49 (d) Notwithstanding the provisions of §60-1-5a(a) of this code, alternating wine  
50 proprietorship agreements in §60-1-5a(c) of this code may also be entered into by two or more  
51 separate owners of farms located in West Virginia to co-own and share the use of wine production  
52 facilities, equipment, and space including a separately bonded wine area for each owner of a farm  
53 located in West Virginia. The two or more farms entering the alternating wine proprietorship  
54 agreement must all be located in West Virginia and must be currently producing grapes, other  
55 fruits, or honey, or other agricultural products containing sugar as certified by the West Virginia  
56 Agriculture Commissioner at the farms located in West Virginia. The farm owners, their farms  
57 located in West Virginia, and the premises where the wine will be manufactured must be located  
58 in West Virginia and must each separately meet federal requirements and state requirements for  
59 a winery or farm winery. Further, wine produced by any of the parties to an alternating wine  
60 proprietorship agreement may not be commingled, and also the wine must be maintained in  
61 separate bonded areas and storage that is sanitary. The parties to an alternating wine  
62 proprietorship agreement shall maintain separate businesses, produce wine separately from each  
63 entity, and shall not assist the other parties. The owners of farms located in West Virginia that are  
64 parties to the alternating wine proprietorship agreement may each only produce in any year  
65 50,000 gallons or less of wine and nonfortified dessert wine manufactured exclusively by natural  
66 fermentation from grapes, other fruits, or honey, or other agricultural products containing sugar;  
67 allowing port, sherry, and Madeira wine to be manufactured by such farm owner within the  
68 gallonage limit, with 25 percent of such raw products being produced by the owner of such farms  
69 at their farm premises located in West Virginia and no more than 25 percent of such produce  
70 originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by  
71 a licensed winery, farm winery, or farm with a validly entered alternating wine proprietorship  
72 agreement shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be  
73 matured in wooden barrels or casks. Farms and farm owners that are a party to an alternating  
74 wine proprietorship agreement and licensed pursuant to this subsection shall each obtain

75 licensure as a farm winery and shall meet the same requirements in the code and the rules, except  
76 where noted. Owners of farms located in West Virginia that obtain licensure as farm wineries and  
77 who are parties to a valid alternating wine proprietorship agreement to co-own or share facilities  
78 are subject to the requirements of the code and the rules and must also have the requisite  
79 production facilities, equipment, and space to safely produce wine for all parties to the alternating  
80 wine proprietorship agreement.

81 (e) The commissioner shall propose legislative rules for promulgation in accordance with  
82 §29A-3-1 et seq. of this code, that are necessary to effectuate the requirements of this section.

## **ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.**

### **§60-2-17a. Request law enforcement assistance.**

1 The West Virginia Alcohol Beverage Control Commissioner may request the West Virginia  
2 State Police to assist the commissioner pursuant §15-2-12(i) of this code, and the West Virginia  
3 Alcohol Beverage Control Commissioner may further request, in writing, the assistance of sheriffs,  
4 deputy sheriffs, and municipal police officers in the coordination and enforcement of §11-16-1 et  
5 seq. of this code, and chapter 60 of this code, and further the assistance shall not be unreasonably  
6 withheld. The state police officers, sheriffs, deputy sheriffs, and municipal police officers who are  
7 assisting the West Virginia Alcohol Beverage Control Commissioner, and its agents, with the civil  
8 and administrative enforcement of the code, may further act upon crimes committed in their  
9 presence.

## **ARTICLE 3. SALES BY COMMISSIONER.**

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

1 The commission shall fix the days on which state stores shall be open and the hours of  
2 opening and closing, and the hours during which agencies may sell alcoholic liquors. Stores shall  
3 not be open nor shall agencies sell alcoholic liquors on: 1. Sundays, until after 10:00 a. m.

4 ~~2. Any general election day.~~

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

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

1           Retail licensees may not sell liquor on Sundays between the hours of 12:00 a. m. and  
2 10:00 a. m., ~~and~~ on Christmas day, or on all other days of the week between the hours of 12:00  
3 a. m. and 8:00 a. m., except that wine and fortified wines may be sold on those days and at ~~such~~  
4 times ~~as~~ authorized in §60-8-34 of this code.

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

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

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

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

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

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

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

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

17           (7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other  
18 person;

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

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

22           (b) Any person who violates any provision of this article, except §60-3A-24 of this code,  
23 including, but not limited to, any provision of this section, or any rule promulgated by the board or

24 the commissioner, or who makes any false statement concerning any material fact, or who omits  
25 any material fact with intent to deceive, in submitting an application for a retail license or for a  
26 renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or  
27 who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor  
28 and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than  
29 \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both  
30 fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses  
31 under this article.

32 (c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits  
33 any retail licensee from employing any person who is at least 18 years of age to serve in any retail  
34 licensee's lawful employment at any retail outlet operated by ~~such~~ the retail licensee, or from  
35 having ~~such~~ that person sell or deliver liquor under the provisions of this article. With the prior  
36 approval of the commissioner, a retail licensee may employ persons at any retail outlet operated  
37 by such retail licensee who are less than 18 years of age but at least 16 years of age, but ~~such~~  
38 that persons duties shall not include the sale or delivery of liquor: *Provided*, That the authorization  
39 to employ ~~such~~ persons under the age of 18 years shall be clearly indicated on the retail license  
40 issued to any ~~such~~ retail licensee.

#### **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 or a mini-distillery may offer sealed original  
2 container bottles of liquor manufactured by the distillery or mini-distillery for retail sale to  
3 customers from the distillery or the mini-distillery for consumption off premises only, if the  
4 customers do not include Class A licensed private clubs. Except for free complimentary samples  
5 offered pursuant to §60-6-1 of this code, and for sales of liquor by the drink from a licensed  
6 distillery or mini-distillery that qualifies, pays the license fee, and obtains a Class A private club  
7 license pursuant to §60-7-1 et seq. of this code, at the licensed premises located at the distillery



8 or mini-distillery's licensed manufacturing premises or at one off-distillery or at one off mini-  
9 distillery location which shall be located within the same county where the distillery or mini-  
10 distillery's manufacturing premises is located, customers are prohibited from consuming any  
11 liquor on the premises of the distillery or the mini-distillery: *Provided,* That a licensed distillery or  
12 mini-distillery may: offer for the retail sale of sealed original container bottles of liquor to customers  
13 for consumption off premises only; offer complimentary samples per this subsection of alcoholic  
14 liquors manufactured by that licensed distillery or mini-distillery for consumption on the premises  
15 only; and sell liquor by the drink for consumption on premises only in its duly licensed Class A  
16 private club's licensed premises on Sundays beginning at 10:00 a. m. in any county in which the  
17 same has been approved as provided for in §7-1-3pp of this code. Further a licensed distillery or  
18 mini-distillery that qualifies, pays the licensee fee, and obtains a Class A private club license  
19 pursuant to §60-7-1 et seq. of this code, must purchase liquor as required by all private clubs from  
20 retail liquor outlets within its market zone, as further specified in §60-3A-1 et seq. and §60-7-1 et  
21 seq. of this code.

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

26 (c) *Payment of taxes and fees.* — The distillery or mini-distillery shall pay all taxes and  
27 fees required of licensed retailers and meet applicable licensing provisions as required by this  
28 chapter and by rule of the commissioner, except for payments of the wholesale markup  
29 percentage and the handling fee provided by rule of the commissioner: *Provided,* That all liquor  
30 used for complimentary samples or offered for sale to customers from the distillery or the mini-  
31 distillery for off-premises consumption ~~shall be~~ is subject to a five percent wholesale markup fee  
32 and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however,* That

33 ~~ne~~ liquor sold by the distillery or mini-distillery shall not be priced less than the price set by the  
34 commissioner pursuant to §60-3A-17 of this code.

35 (d) *Payments to market zone retailers.* — Each distillery or mini-distillery shall submit to  
36 the commissioner two percent of the gross sales price of each retail liquor sale for the value of all  
37 sales at the distillery or the mini-distillery each month. This collection shall be distributed by the  
38 commissioner, at least quarterly, to each market zone retailer located in the distillery or mini-  
39 distillery's market zone, proportionate to each market zone retailer's annual gross prior years'  
40 pretax value sales. The maximum amount of market zone payments that a distillery or mini-  
41 distillery shall be required to submit to the commissioner is \$15,000 per annum.

42 (e) *Building Code and Tax Classification.* — Notwithstanding any provision of this code,  
43 to the contrary, the mere addition of a distillery or mini-distillery licensed to a property under this  
44 article does not change the nature or use of the property that would otherwise qualify as an  
45 agricultural use for building code and property tax classification purposes.

46 (f) *Limitations on licensees.* — ~~No~~ A distillery or mini-distillery may not sell more than 3,000  
47 gallons of product at the distillery or mini-distillery location the initial two years of licensure. The  
48 distillery or mini-distillery may increase sales at the distillery or mini-distillery location by 2,000  
49 gallons following the initial 24-month period of licensure and may increase sales at the distillery  
50 or mini-distillery location each subsequent 24-month period by 2,000 gallons, not to exceed  
51 10,000 gallons a year of total sales at the distillery or mini-distillery location. No A licensed mini-  
52 distillery may not produce more than 50,000 gallons per calendar year at the mini-distillery  
53 location. No more than one distillery or mini-distillery license may be issued to a single person or  
54 entity and ~~ne~~ a person may hold both a distillery and a mini-distillery license.

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

1 (a) *Sales of wine.* — An operator of a winery or farm winery may offer wine produced by  
2 the winery or farm winery for retail sale to customers from the winery, ~~or farm winery~~ or a farm  
3 winery's licensed farm location in West Virginia pursuant to §60-1-5a(c) and §60-1-5a(d) of this

4 code, for consumption off the premises only, except for complimentary samples; allowing for, no  
5 more than three complimentary samples per patron and no greater, in volume, than one fluid  
6 ounce per such sample, offered pursuant to §60-6-1 of this code; and further, all customers are  
7 prohibited from consuming any wine on the premises of the winery, ~~or farm winery~~ or farm winery's  
8 licensed farm location in West Virginia pursuant to §60-1-5a(c) and §60-1-5a(d) of this code,  
9 unless ~~such~~ the winery or farm winery has obtained a multi-capacity winery or farm winery license:  
10 *Provided*, That a licensed winery or farm winery may: offer complimentary samples per this  
11 subsection of wine manufactured by that licensed winery or farm winery for consumption on  
12 premises only; offer for the retail sale of sealed original container bottles of wine to customers for  
13 consumption off premises only; and offer wine by the drink or glass for sale to customers for any  
14 licensed winery or farm winery who has qualified, paid the license fee, and obtained a multi-  
15 capacity license, along with separately being licensed as a private wine restaurant that is located  
16 on its winery or farm winery's licensed premises, for consumption on the premises only, on  
17 Sundays beginning at 10:00 a. m. ~~in any county in which the same has been approved as provided~~  
18 ~~in §7-1-3pp of this code.~~

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

22 (c) *Payment of taxes and fees.* —

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

26 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax  
27 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in  
28 §60-8-1 *et seq.* of this code.

29 (3) The five percent wine excise tax, levied pursuant to §60-3-9d, or ~~pursuant to~~ §8-13-7

30 of this code, may not be imposed or collected on purchases of wine in the original sealed package  
31 for the purpose of resale in the original sealed package if the final purchase of ~~such~~ the wine is  
32 subject to the excise tax or if the purchase is delivered outside this state.

33 (4) ~~No~~ A liter tax shall not be collected on wine sold in the original sealed package for the  
34 purpose of resale in the original sealed package if a subsequent sale of ~~such~~ the wine is subject  
35 to the liter tax.

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

38 (d) *Advertising.* — A winery or farm winery may advertise a particular brand or brands of  
39 wine produced by it and the price of the wine subject to federal requirements or restrictions.

40 (e) *Limitations on licensees.* — A winery or farm winery ~~must~~ shall maintain separate  
41 winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of  
42 those capacities and ~~must~~ shall pay all associated license fees, unless ~~such~~ the winery or farm  
43 winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery  
44 or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery  
45 license, may act as its own supplier; retailer for off-premises consumption of its wine as specified  
46 in §60-6-2 of this code; private wine restaurant; and direct shipper for wine produced by the winery  
47 or farm winery. All wineries must use a distributor to distribute and sell their wine in the state,  
48 except for farm wineries. No more than one winery or farm winery license may be issued to a  
49 single person or entity and ~~no~~ a person may hold both a winery and a farm winery license. Farm  
50 wineries may enter into alternating wine proprietorship agreements pursuant to §60-1-5a of this  
51 code.

52 (f) For purposes of this section, terms ~~will~~ have the same meaning, where applicable, as  
53 provided in §8-13-7(b) of this code; otherwise the meaning shall be applied from §60-1-1 et seq.  
54 of this code.

## **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

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

1 A person shall not:

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

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

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

7 (4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude,  
8 unrectified or impure form of ethyl alcohol, or other ~~foreign or~~ deleterious substance or any other  
9 substantiated liquid or liquid designed or intended to increase alcohol content or potency;

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

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

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

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

19 A person who violates any provision of this section shall be guilty of a misdemeanor and,  
20 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less  
21 than 30 days nor more than one year or both such fine and confinement, for the first offense.

22 Upon conviction of a second or subsequent offense, the court may impose a penalty of  
23 confinement in the penitentiary for a period not to exceed three years. A person who violates any

24 provision of this section for the second or any subsequent offense under this section, is guilty of  
25 a felony, and upon conviction thereof, shall be imprisoned in a state correction facility for a period

26 not to exceed three years.

27 An indictment for any first violation of §60-6-7(1), §60-6-7(2) and §60-6-7(3) of this code,  
28 or any of them, shall be sufficient if in form or effect as follows:

29 State of West Virginia

30 County of ....., to wit:

31 The Grand Jurors of the State of West Virginia, in and for the body of the County of .....,  
32 upon their oaths present that ....., on the ..... day of ....., 20...., in the said County of  
33 ....., did unlawfully, without a State license and without authorization under the Alcohol  
34 Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a  
35 quantity of alcoholic liquor, against the peace and dignity of the state.

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

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

1 A licensed person shall not:

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

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

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

7 (4) Sell alcoholic liquors to a person specified in §60-3-22 of this code;

8 (5) Sell, furnish, or serve alcoholic liquors except as authorized by his or her license,  
9 including but not limited to Class A licensees licensed pursuant to §60-7-1 *et seq.* and §60-8-1 *et*  
10 *seq.* of this code, for on-premises consumption shall only sell or serve alcoholic liquors by the  
11 drink poured by the licensee from the original container, and no original container or bottle sales  
12 are permitted, an exception may be permitted for Class A licensees licensed by §60-7-1 *et seq.*  
13 and §60-8-1 *et seq.* of this code, who may, when selling or serving only wine accompanied with

14 freshly prepared food or meals in excess of \$15, permit wine bottle service at a table comprised  
15 of two or more patrons. The patrons shall be 21 years of age or older, and be consuming the  
16 food, the meal and the wine at the licensed premises.

17 (6) Sell, furnish, or serve pre-mixed alcoholic liquors that are not in the original container,  
18 except for alcohol liquors poured from the original container and used in frozen drink mixing  
19 machines or machines used for mixing margaritas and sangrias that mix a nonalcoholic mixer,  
20 ice, and the alcoholic liquors: *Provided*, That the machines are emptied and sanitized daily with  
21 any unused mixed alcoholic liquors being disposed of, by the end of operations, the same day.

22 (7) Sell any alcoholic liquor when forbidden by the provisions of this chapter;

23 (8) Adulterate any alcoholic liquor by the addition of any other substance or liquid designed  
24 or intended to increase the alcohol percentage or potency;

25 (79) Sell, possess, possess for sale, furnish, or provide any powdered alcohol;

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

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

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

1 (a) A person may not:

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

3 (2) Drink alcoholic liquor in a public place;

4 (3) Tender a drink of alcoholic liquor to another person in a public place, which tender shall  
5 include any person providing cups, glasses, mixers, ice, refrigeration, storage of alcoholic liquors,  
6 any food or snacks, a lounge area, or space for patrons to gather, any type of musical  
7 entertainment, any type of exotic or other entertainment, or any similar activity to another person  
8 who is possessing or consuming alcoholic liquors in a business not licensed pursuant to this  
9 chapter, especially in what is referred to as a “bring your own bottle”, “bring your own booze”, or  
10 “BYOB”-type business, where tendering a drink in this public place is unlawful as set forth in this  
11 chapter and section 46, article VI of the Constitution of the State of West Virginia: *Provided, That*  
12 the Commissioner shall propose legislative rules for promulgation in accordance with §29A-3-1,  
13 *et seq.* of this code, allowing Class A private clubs and restaurants to permit customers to bring  
14 wine purchased elsewhere for consumption on the licensed premises or in the restaurants and to  
15 charge a corkage fee for the wine.

16 (4) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not  
17 bearing stamps or seals of the commissioner, without having first obtained written authority from  
18 the commissioner for its possession; or

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

21 (b) Any law-enforcement officer may arrest without a warrant and take the following  
22 actions against a person who, in his or her presence, violates §60-6-9(a)(1) of this code: (1) If  
23 there is some nonintoxicated person who will accept responsibility for the intoxicated person, the  
24 officer may issue the intoxicated person a citation specifying a date for appearance before a  
25 judicial officer and release him or her to the custody of the individual accepting responsibility:  
26 *Provided, That* the issuance of a citation shall be used whenever feasible; (2) if it does not impose  
27 an undue burden on the officer, he or she may, after issuance of the a citation, transport the  
28 individual to the individual’s present residence or arrange for the transportation; (3) if the individual



29 is incapacitated or the alternatives provided in §60-6-9(b)(1) and §60-6-9(b)(2) of this code are  
30 not possible, the officer shall transport or arrange for transportation to the appropriate judicial  
31 officer as defined by §27-11-17 of this code; or (4) if the individual is incapacitated and, in the law-  
32 enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for  
33 transportation by ambulance or otherwise to a hospital emergency room. The officer shall  
34 accompany the individual until he or she is discharged from the emergency room or admitted to  
35 the hospital. If the individual is released from the emergency room, the officer may proceed as  
36 described in §60-6-9(b)(1), §60-6-9(b)(2), and §60-6-9(b)(3) of this code. If the individual is  
37 admitted to the hospital, the officer shall issue a citation to the individual specifying a date for  
38 appearance before a judicial officer.

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

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

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

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

50 (d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until  
51 complaint may be made before a judicial officer and a warrant or summons issued, any person  
52 who in the presence of the law-enforcement officer violates any one or more of §60-6-9(a)(1)  
53 through §60-6-9(a)(6) of this code: *Provided*, That the law-enforcement officer may use  
54 reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying

55 out the provisions of this section.

56 (e) Any person who violates §60-6-9(a)(1) of this code is guilty of a misdemeanor and,  
57 upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following  
58 options:

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

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

66 (3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100  
67 and not less than five nor more than 60 days in jail, or a fine of not less than \$5 nor more than  
68 \$100 and completion of not less than five hours of alcoholism counseling at the nearest  
69 community mental health ~~mental retardation~~ center: *Provided*, That three convictions for public  
70 intoxication within the preceding six months is considered evidence of alcoholism. For the  
71 educational counseling programs described in this subsection the community mental health  
72 mental retardation center may charge each participant its usual and customary fee and shall  
73 certify in writing to the referring judicial officer the completion or failure to complete the prescribed  
74 program for each individual.

75 (f) A person charged with a violation of §60-6-9(a)(1) of this code who is an alcoholic shall  
76 be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 *et*  
77 *seq.* and §27-6a-1 *et seq.* of this code.

78 (g) Any person who violates §60-6-9(a)(2) of this code is guilty of a misdemeanor and,  
79 upon conviction thereof, shall be fined not less than \$5 nor more than \$100; and upon a second  
80 or subsequent conviction thereof, shall be fined not less than \$5 nor more than \$100, or confined

81 in jail not more than 60 days, or both.

82 (h) Any person who violates §60-6-9(a)(3) of this code is guilty of a misdemeanor and,  
83 upon conviction thereof, shall be fined not less than \$5 nor more than \$100, or confined in jail not  
84 more than 60 days, or both.

85 (i) Any person who violates §60-6-9(a)(4) or §60-6-9(a)(5) of this code is guilty of a  
86 misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor more than  
87 \$500; and upon conviction of second or subsequent offense, he or she is guilty of a felony and,  
88 shall be confined in a state correctional facility for a period of not less than one year nor more  
89 than three years.

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

### **§60-7-2. Definitions; power to lease building for establishment of private club.**

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 ~~license shall remain~~ is 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; or (2) is a nonprofit social club, which is operated exclusively for the benefit of its  
18 members, which pays no part of its income to its shareholders or individual members, which owns  
19 or leases a building or other premises to which club are admitted only duly elected or approved  
20 dues-paying members in good standing of the corporation or association and their guests while  
21 in the company of a member and to which club the general public is not admitted, and which club  
22 maintains in the building or on the premises a suitable kitchen and dining facility with related  
23 equipment for serving food to members and their guests; or (3) is organized and operated for  
24 legitimate purposes which has at least 100 duly elected or approved dues-paying members in  
25 good standing, which owns or leases a building or other premises, including any vessel licensed  
26 or approved by any federal agency to carry or accommodate passengers on navigable waters of  
27 this state, to which club are admitted only duly elected or approved dues-paying members in good  
28 standing of the corporation or association and their guests while in the company of a member and  
29 to which club the general public is not admitted, and which club maintains in the building or on  
30 the premises a suitable kitchen and dining facility with related equipment and employs a sufficient  
31 number of persons for serving meals to members and their guests; or (4) is organized for  
32 legitimate purposes and owns or leases a building or other delimited premises in any state,  
33 county, or municipal park or at any airport, in which building or premises a club has been  
34 established, to which club are admitted only duly elected and approved dues-paying members in  
35 good standing and their guests while in the company of a member and to which club the general  
36 public is not admitted, and which maintains in connection with the club a suitable kitchen and  
37 dining facility and related equipment and employs a sufficient number of persons for serving meals  
38 in the club to the members and their guests.

39 (f) "Private club and carryout" means an applicant for private club or a licensed private  
40 club meeting the separate requirements of §60-7-1 et seq. of this code, for a private club, the  
41 requirements under §11-16-1 et seq. of this code, for a Class B nonintoxicating beer license, the

42 requirements under §60-8-1 et seq. of this code, for a Class B wine license and the criteria set  
43 forth in this subsection which:

44 (1) Has at least 100 members for the private club area;

45 (2) Has the same person or entity applied and qualified separately for each license and  
46 paid the appropriate fees and meets all other requirements;

47 (3) Has a Class A private club that is separate, but directly connected and contiguous with  
48 Class B license, such that there is an interconnected doorway, hallway, or foyer for the licensee's  
49 employee use only, and further that the Class A private club and Class B licensee have separate  
50 entry and exit points for patrol ingress and egress;

51 (4) Shall prepare and provide adequate freshly prepared food or meals to serve its stated  
52 members and guests;

53 (5) Shall not use third-party entities or individuals to purchase, sell, furnish, or serve  
54 alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer;

55 (6) Shall provide a floorplan for the proposed premises with a defined and bounded area  
56 to safely account for the ingress and egress of stated members and guests who will be at the  
57 Class A private club license and separately for the patrons at the Class B licensee;

58 (7) Uses an age verification system approved by the commissioner as set forth in §61-8-  
59 27 of this code.

60 (8) Only permits nonintoxicating beer and wine to be offered for sale for off-premises  
61 consumption from the separate area of the Class B license, except for licensees having obtained  
62 a growler license then growler sales are permitted under the growler requirements for either a  
63 Class A private club license or the Class B license.

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

67 (1) Has at least 100 members;

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

71 (3) Shall prepare, provide, or engage a food caterer to provide adequate freshly prepared  
72 food or meals to serve its stated members and guests who will be attending the temporary festival,  
73 fair, or other event, and further shall provide any documentation or agreements with the caterer  
74 to the commissioner prior to approval;

75 (4) Shall not use third-party entities or individuals to purchase, sell, furnish, or serve  
76 alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer;

77 (5) Shall provide adequate restroom facilities, whether permanent or portable, to serve the  
78 stated members and guests who will be attending the festival, fair, or other event;

79 (6) Shall provide a floorplan for the proposed premises with a defined and bounded area  
80 to safely account for the ingress and egress of stated members and guests who will be attending  
81 the festival, fair, or other event; and

82 (7) Uses an age verification system approved by the commissioner.

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

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

86 (2) Offers short-term, daily-rate accommodations or lodging for members and their guests  
87 amounting to at least 30 separate bedrooms, and also offers a conference center with significant  
88 facility square footage for meetings;

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

92 (4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared  
93 in the private hotel's full kitchen. In calculating the food inventory, the commissioner may not

94 include microwavable, frozen, or canned foods;

95 (5) Owns or leases, controls, operates, and uses acreage amounting to more than one  
96 acre but fewer than 10 acres, which are contiguous acres of bounded or fenced real property  
97 which would be listed on the licensees' floorplan and would be used for hotel and conference  
98 center events and large contracted-for group-type events such as weddings, reunions,  
99 conferences, meetings, and sporting or recreational events;

100 (6) Lists the entire property from §60-7-2(h)(5) of this code and all adjoining buildings and  
101 structures on the private hotel's floorplan which would comprise the licensed premises, and which  
102 would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout  
103 the licensed premises, whether these activities were conducted in a building, structure, or  
104 outdoors while on the private hotel's licensed premises and as noted on the private hotel's  
105 floorplan;

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

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

110 (f) (i) "Private resort hotel" means an applicant for a private club or licensed private club  
111 licensee meeting the criteria set forth in this subsection which:

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

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

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

118 (4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared  
119 in the private resort hotel's full kitchen. ~~and~~ In calculating the food inventory the commissioner

120 may not include microwavable, frozen, or canned foods;

121 (5) Owns or leases, controls, operates, and uses acreage amounting to at least 10  
122 contiguous acres of bounded or fenced real property which would be listed on the licensee's  
123 floorplan and would be used for destination, resort, and large contracted-for group-type events  
124 such as weddings, reunions, conferences, meetings, and sporting or recreational events. The  
125 acreage may include resident brewer and brewpub operations licensed pursuant to §11-16-1 et  
126 seq. of this code.

127 (6) Lists the entire property from §60-7-2(i)(5) of this code and all adjoining buildings and  
128 structures on the private resort hotel's floorplan which would comprise the licensed premises,  
129 which would be authorized for the lawful sales, service, and consumption of alcoholic liquors  
130 throughout the licensed premises, whether these activities were conducted in a building, structure,  
131 or outdoors while on the private resort hotel's licensed premises and as noted on the private resort  
132 hotel's floorplan;

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

136 (8) ~~Utilizes~~ Uses an age verification system approved by the commissioner.

137 ~~(g)~~ (j) "Private golf club" means an applicant for a private club or licensed private club  
138 licensee meeting the criteria set forth in this subsection which:

139 (1) Has at least ~~4,000~~ 100 members;

140 (2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes,  
141 not reusing nine golf playing holes to comprise the 18 golf playing holes, a clubhouse, and offers  
142 golf carts, whether electric or gasoline;

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

145 (4) Owns or leases, controls, operates, and uses acreage amounting to at least 80



146 contiguous acres of bounded or fenced real property which would be listed on the private golf  
147 club's floorplan and could be used for golfing events and large contracted-for group-type events  
148 such as weddings, reunions, conferences, meetings, and sporting or recreational events;

149 (5) Lists the entire property from §60-7-2(j)(4) of this code and all adjoining buildings and  
150 structures on the private golf club's floorplan which would comprise the licensed premises, which  
151 would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout  
152 the licensed premises, whether these activities were conducted, in a building, structure, or  
153 outdoors while on the private golf club's licensed premises and as noted on the private golf club's  
154 floorplan;

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

157 (7) ~~Utilizes~~ Uses an age verification system approved by the commissioner.

158 The ~~Department~~ Division of Natural Resources, the authority governing any county or  
159 municipal park, or any county commission, municipality, other governmental entity, public  
160 corporation, or public authority operating any park or airport may lease as lessor a building or  
161 portion thereof or other limited premises in any ~~such~~ park or airport to any corporation or  
162 unincorporated association for the establishment of a private club pursuant to this article.

### **§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.**

1 Notwithstanding any other provisions of this code to the contrary, licensees ~~are hereby~~  
2 ~~authorized to~~ may sell and serve alcoholic liquors by the drink, other than in sealed packages,  
3 which includes no bottle sales to patrons, for consumption on the premises of the licensees, to  
4 their members and their guests in accordance with the provisions of this article, the rules, and as  
5 authorized in §60-6-8 of this code. The licensees may keep and maintain on their premises a  
6 supply of those alcoholic liquors in ~~such~~ quantities ~~as may be~~ appropriate for the conduct of their  
7 operations ~~thereof~~.

### **§60-7-4. Application for license; information required; verification; application to be**

**accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.**

1 (a) Application for a license to operate a private club shall be made on ~~such a~~ form as may  
2 be prescribed by the commissioner and shall include:

3 (1) The name of the applicant;

4 (2) If the applicant is an unincorporated association, the names and addresses of the  
5 members of its governing board;

6 (3) If the applicant is a corporation, the names and addresses of its officers and directors;

7 (4) The place at which the applicant will conduct its operations and whether the ~~same~~  
8 place is owned or leased by the applicant;

9 (5) The number of members of the applicant;

10 (6) The name or names of any national organizations with which applicant is affiliated and  
11 the nature of ~~such~~ the affiliation;

12 (7) The size and nature of the dining and kitchen facilities operated by applicant; and

13 (8) ~~Such~~ Any other information as required by the commissioner ~~may reasonably require~~  
14 which shall include, but not be limited to, the criminal records, if any, of each member of the  
15 applicant's governing board and/or its officers and directors who have been convicted of a felony  
16 or a crime involving moral turpitude, and the true ownership information of the applicant and  
17 whether the applicant has made any false statements or material misrepresentations, involves  
18 hidden ownership, or involves persons with an undisclosed pecuniary interest.

19 (b) The application shall be verified by each member of the governing board of the  
20 applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers  
21 and all members of its board of directors. The application shall be accompanied by the license  
22 fee ~~hereinafter~~ prescribed in §60-7-6 of this code, and by a bond of the applicant in the penal sum  
23 of \$5,000 with a corporate surety authorized to transact business in the State of West Virginia,  
24 payable to the State of West Virginia, which bond shall be conditioned on the payment of all fees

25 ~~herein~~ prescribed in this article and on the faithful performance of and compliance with the  
26 provisions of this article.

27 (c) Under no circumstance may any college fraternity or sorority be issued a license to  
28 operate a private club.

29 (d) ~~No~~ A license to operate a private club will not be issued to applicants who discriminate  
30 against any person or group of persons because of race or color of such person or group of  
31 persons.

**§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.**

1 (a) Upon receipt of ~~the~~ a completed application referred to in §60-7-4 of this code, together  
2 with the accompanying fee and bond, the commissioner shall conduct an investigation to  
3 determine the accuracy of the matters contained in ~~such~~ the completed application and whether  
4 applicant is a bona fide private club of good reputation in the community in which it ~~shall operate~~  
5 operates. For the purpose of conducting ~~such~~ the investigation, the commissioner may withhold  
6 the granting or refusal to grant ~~such~~ the license for a period not to exceed 30 days or until the  
7 applicant has completed the conditions set forth in §60-7-4(a) of this code. If it ~~shall appear~~  
8 appears that ~~such~~ the applicant is a bona fide private club, of good reputation in the community  
9 in which it ~~shall operate~~ operates and that there is no false statement, no material  
10 misrepresentations, no hidden ownership, no persons with an undisclosed pecuniary interest  
11 contained in such the application, along with no other omissions or failures by the applicant to  
12 complete the application, as determined by the commissioner, the commissioner shall issue a  
13 license authorizing the applicant to sell alcoholic liquors as provided in §60-7-3 of this code, and  
14 otherwise shall refuse to issue ~~such~~ the license, except that in the case of an application by a  
15 corporation or association to operate a private club in connection with:

16 (1) A state park, the Director of the ~~Department~~ Division of Natural Resources must grant

17 his or her approval before the license can be issued; or

18 (2) A county or municipal park, or an airport, the authority governing the park or airport  
19 must grant its approval before the license can be issued.

20 A license may not be issued for a private club in any state park unless a dining facility  
21 comparable to the dining facility for the proposed private club ~~will be~~ is available to serve meals  
22 to the general public. A license may not be issued for a private club in any county or municipal  
23 park, or an airport, unless a dining facility comparable to the dining facility for the proposed private  
24 club ~~will be~~ is available to serve meals to the general public.

25 (b) Upon refusal to issue ~~such a~~ a license, the commissioner shall make and enter an order  
26 denying ~~such the~~ the application, which denial and refusal ~~shall be~~ is final unless a hearing is  
27 requested in accordance with the provisions of §60-7-13 of this code. When ~~such the~~ the refusal or  
28 denial becomes final the commissioner shall ~~forthwith~~ immediately refund to the applicant his or  
29 her fees and bond accompanying the application.

30 (c) ~~Such The~~ The license shall be ~~of such in a~~ in a form and design as ~~as~~ prescribed by the  
31 commissioner ~~may prescribe~~ by reasonable rule or regulation, and shall authorize the licensee to  
32 sell alcoholic liquors at only one location.

33 (d) ~~Such The~~ The license ~~shall expire~~ expires on June 30 next following the date of issue and  
34 may be renewed upon ~~the same showing as required~~ meeting the requirements for the issuance  
35 of the initial license, together with the payment of fees and filing of the bond as required by this  
36 article.

37 (e) A license issued under the provisions of this article ~~may not be~~ is not transferable.

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

38 (a) The annual license fee for a license issued under the provisions of this article to a  
39 fraternal or veterans organization or a nonprofit social club ~~shall be~~ is \$750.

40 (b) The annual license fee for a license issued under the provisions of this article to a  
41 private club other than a private club of the type specified in §60-7-6(a) of this code ~~shall be~~ is

42 \$1,000, if the private club has less than 1,000 members, \$2,500, if the private club has 1,000 or  
43 more members, ~~or if the private club is a private club and carryout,~~ \$4,000, if the private club is a  
44 private golf club as defined in §60-7-2 of this code. ~~and further~~ If the private club is a private hotel  
45 or private resort hotel as defined in section two of this article, ~~said the~~ private hotel or private  
46 resort hotel may designate areas within the licensed premises for the lawful sale, service, and  
47 consumption of alcoholic liquors as provided for by this article. The annual license fee for private  
48 hotel with a maximum of three or fewer designated areas only is \$4,000. The annual license fee  
49 for a private resort hotel with five or fewer designated areas ~~shall be~~ is \$7,500, and the annual  
50 license fee for a private resort hotel with at least six but no more than 10 designated areas ~~shall~~  
51 ~~be~~ is \$12,500. The annual license fee for a private resort hotel with at least 11 but no more than  
52 15 designated areas ~~shall be~~ is \$17,500. The annual license fee for a private resort hotel with no  
53 fewer than 15 nor more than 20 designated areas ~~shall be~~ is \$22,500: *Provided*, That a private  
54 resort hotel having obtained the license and paid the \$22,500 annual license fee may, upon  
55 application to and approval of the commissioner, designate additional areas for a period not to  
56 exceed seven days for an additional fee of \$150 per day, per designated area.

57 (c) The fee for any ~~such~~ license issued following January 1 of any year ~~and to expire~~  
58 expiring on June 30 of ~~such~~ that year shall be one-half of the annual license fee prescribed by  
59 §60-7-6(a) and §60-7-6(b) of this code.

60 (d) All ~~such~~ fees shall be paid by the commissioner to the State Treasurer and credited to  
61 the General Revenue Fund of the state.

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

1 (1) The commissioner may issue a special one-day license to be designated a Class S2  
2 license for the retail sale of alcoholic liquors (liquor and wine), nonintoxicating beer, and  
3 nonintoxicating craft beer, for on-premises consumption at a festival, fair, or other event, provided  
4 that, the festival, fair, or other event is sponsored, endorsed, or approved by the governing body,

5 or its duly elected or appointed officers of either the municipality or the county in which the festival,  
6 fair, or other event is to be conducted. The special license is temporary and issued for a term no  
7 longer than 10 consecutive days, and the fee for the special license is \$750. This fee shall be per  
8 each 10-day event application and shall not be prorated or refunded. No more than 10 licenses  
9 shall be issued to any single licensee during any calendar year. The license application shall  
10 contain any information required by the commissioner and shall be submitted to the commissioner  
11 at least 15 days prior to the event. Nonintoxicating beer or nonintoxicating craft beer sold,  
12 furnished, or served for this temporary special license shall be purchased from a licensed  
13 distributor or resident brewer, acting in a limited capacity as a distributor, in accordance with §11-  
14 16-1 et seq. of this code, that services the territory where the festival, fair, or other event is  
15 occurring. Wine sold, furnished, or served for the temporary special license shall be purchased  
16 from a licensed distributor, winery, or farm winery in accordance with §60-8-1 et seq. of this code.  
17 Liquor sold, furnished, or served for the temporary special license shall be purchased from a  
18 licensed retail liquor outlet, in accordance with §60-3A-1 et seq. of this code, located in the market  
19 zone or contiguous market zone where the festival, fair, or other event is occurring, as determined  
20 by the commissioner. Licensed beer distributors representatives, brewer representatives, resident  
21 brewer representatives, wine distributor representatives, winery and farm winery representatives,  
22 and liquor representatives may attend the festival, fair, or other event and discuss their respective  
23 products, but shall not engage in the purchasing, selling, furnishing, or serving of the  
24 nonintoxicating beer, nonintoxicating craft beer, wine, or liquor. A licensee licensed by this section  
25 may use bona fide employees or volunteers. Third party entities or individuals who are not listed  
26 on the Class S2 license may not perform any duties or functions of the licensee.

27 (2) A license issued under the provisions of this section and the licensee holding the  
28 license are subject to all other provisions of this article and the rules and orders of the  
29 commissioner relating to the special license: *Provided*, That the commissioner may by rule or  
30 order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the

31 circumstances of each event requires, including, without limitation, the right to revoke or suspend  
32 immediately any license issued pursuant to this section prior to any notice or hearing,  
33 notwithstanding the provisions of §60-7-13a of this code: *Provided, however,* That under no  
34 circumstances may the provisions of §60-7-12 of this code, be waived or an exception granted  
35 with respect to those provisions.

**§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~~ the  
2 licensee's premises to:

3 (1) Sell, ~~or~~ offer for sale, or serve any alcoholic liquors other than from the original  
4 package, ~~or~~ container, or by the drink, 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;

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

11 (4) Sell, give away, or permit the sale of, gift to, or the procurement of, any nonintoxicating  
12 beer, wine, or alcoholic liquors, for or to any person known to be ~~deemed~~ determined legally  
13 incompetent, or for or to any person who is physically incapacitated due to consumption of  
14 nonintoxicating beer, wine, or alcoholic liquor or the use of drugs;

15 (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any  
16 licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a. m.  
17 and 1:00 p. m., or, between the hours of 3:00 a. m. and 10:00 a. m. ~~in any county upon approval~~  
18 ~~as provided for in §7-1-3pp of this code,~~ on any Sunday;

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

21 age;

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

24 (8) Sell, or offer for sale, any alcoholic liquor to any person who is not a duly-elected or  
25 approved dues-paying member in good standing of ~~said~~ the private club or a guest of ~~such~~ the  
26 member;

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

30 (10) (A) Employ any person who is less than 18 years of age in a position where the  
31 primary responsibility for ~~such~~ the employment is to sell, furnish, serve, or give nonintoxicating  
32 beer, wine, or alcoholic liquors to any person;

33 (B) Employ any person who is between the ages of 18 and 21 who is not directly  
34 supervised by a person aged 21 or over in a position where the primary responsibility for ~~such~~ the  
35 employment is to sell, furnish, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any  
36 person; or

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

38 (b) It is unlawful for any licensee to advertise in any news media or other means, outside  
39 of the licensee's premises, the fact that alcoholic liquors may be purchased ~~thereat~~ on the  
40 premises.

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

**§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that a licensee has: (i) Violated the



2 provisions of §11-16-1 *et seq.* of this code, or of this chapter; (ii) acted in ~~such~~ a way as that would  
3 have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the  
4 commissioner, the commissioner may impose any one or a combination of the following  
5 sanctions:

- 6 (1) Revoke the licensee's license;
- 7 (2) Suspend the licensee's license;
- 8 (3) Place the licensee on probationary status for a period not to exceed 12 months; and
- 9 (4) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation  
10 is not imposed.

11 (b) Any monetary penalty assessed and collected by the commissioner shall be  
12 transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special  
13 revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is ~~hereby~~  
14 ~~created~~ continued. All moneys collected, received, and deposited in the Alcohol Beverage Control  
15 Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the  
16 purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be  
17 treated by the State Treasurer or State Auditor as any part of the general revenue of the state. At  
18 the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in excess  
19 of \$20,000 shall be transferred to the General Revenue Fund.

20 (c) In addition to the grounds for revocation, suspension, or other sanction of a license set  
21 forth in §60-7-13(a) of this code, conviction of the licensee of any offense constituting a violation  
22 of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer, or  
23 gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee  
24 of any violation of the laws of this state or of the United States relating to prostitution, or the sale,  
25 possession, or distribution of narcotics or controlled substances, ~~shall be~~ is mandatory grounds  
26 for revocation of the licensee's license for a period of at least one year.

27 (d) A licensee shall notify, in a timely manner, emergency medical services or law

28 enforcement if a life-threatening medical emergency occurs on the licensee's licensed premises.  
29 In addition to the grounds for revocation, suspension, or other sanction of a license set forth in  
30 this section, the commissioner may revoke, suspend, or otherwise sanction a licensee for failing  
31 to comply with the provisions of this subsection.

32 (e) If a life-threatening medical emergency occurs on a licensee's licensed premises  
33 requiring notification of emergency medical services or law enforcement under §60-7-13(d) of this  
34 code, the licensee shall notify the commissioner within 48 hours of the emergency's occurrence.  
35 The commissioner may revoke, suspend, or otherwise sanction a licensee for failing to comply  
36 with the 48-hour notification requirement.

37 (f) As used in this section, a life-threatening medical emergency includes, but is not limited  
38 to, respiratory distress or cessation of breathing, severe chest pains, shock, uncontrolled  
39 bleeding, poisoning, prolonged unconsciousness, overdose, any complaint or observation which  
40 indicates significant head or spinal injury, and life-threatening physical injury caused by a crime  
41 of violence against a person occupying or emanating from the licensee's licensed premises.

42 (g) The commissioner may promulgate emergency rules and shall propose legislative  
43 rules for promulgation pursuant to §29A-3A-1 et seq. of this code, to effectuate the amendments  
44 made to this section during the 2018 regular session of the Legislature.

## **ARTICLE 8. SALE OF WINES.**

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

1 (a) ~~Ne~~ A person may not engage in business in the capacity of a winery, farm winery,  
2 supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine  
3 spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a  
4 person continue to engage in any activity after his or her license has expired, been suspended or  
5 revoked. ~~Ne~~ A person may not be licensed simultaneously as a distributor and a retailer. ~~Ne~~ A  
6 person, except for a winery or farm winery, may not be licensed simultaneously as a supplier and  
7 a retailer. ~~Ne~~ A person may not be licensed simultaneously as a supplier and a private wine bed

8 and breakfast, private wine restaurant, or a private wine spa. ~~No~~ A person may not be licensed  
9 simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant,  
10 or a private wine spa. ~~No~~ A person may not be licensed simultaneously as a retailer and a private  
11 wine bed and breakfast, a private wine restaurant, or a private wine spa.

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

14 (1) \$150 per year for a supplier's license;

15 (2) \$2,500 per year for a distributor's license and each separate warehouse or other facility  
16 from which a distributor sells, transfers, or delivers wine shall be separately licensed and there  
17 shall be collected with respect to each location the annual license fee of \$2,500 as ~~herein~~ provided  
18 in this section;

19 (3) \$150 per year for a retailer's license;

20 (4) \$250 per year for a wine specialty shop license, in addition to any other licensing fees  
21 paid by a winery or retailer holding a license, except for the amount of the license fee and the  
22 restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine  
23 specialty shop retailer is subject to all other provisions of this article which are applicable to a wine  
24 specialty shop retailer as defined in §60-8-2 of this code;

25 (5) \$150 per year for a wine tasting license;

26 (6) \$150 per year for a private wine bed and breakfast license and each separate bed and  
27 breakfast from which a licensee sells wine shall be separately licensed and there shall be  
28 collected with respect to each location the annual license fee of \$150 as ~~herein~~ provided in this  
29 section;

30 (7) \$250 per year for a private wine restaurant license and each separate restaurant from  
31 which a licensee sells wine shall be separately licensed and there shall be collected with respect  
32 to each location the annual license fee of \$250 as ~~herein~~ provided in this section;

33 (8) \$150 per year for a private wine spa license and each separate private wine spa from

34 which a licensee sells wine shall be separately licensed and there shall be collected with respect  
35 to each location the annual license fee of \$150 as ~~herein~~ provided in this section;

36 (9) \$150 per year for a wine sampling license issued for a wine specialty shop under  
37 subsection (n) of this section;

38 (10) No fee shall be charged for a special one-day license under §60-8-3(p) of this code  
39 or for a heritage fair and festival license under §60-8-3(q) of this code;

40 (11) \$150 per year for a direct shipper's license for a licensee who sells and ships only  
41 wine and \$250 per for a direct shipper's license who ships and sells wine, nonfortified dessert  
42 wine, port, sherry, or Madeira wines; and

43 (12) \$300 per year for a multi-capacity winery or farm winery license which shall enable  
44 the holder to operate as a retailer, wine specialty shop, supplier and direct shipper without  
45 obtaining an individual license for each capacity.

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

49 (d) ~~No~~ A retailer may not be licensed as a private club as provided by §60-7-1 *et seq.* of  
50 this code, except as provided by §60-8-3(k) of this code.

51 (e) ~~No~~ A retailer may not be licensed as a Class A retail dealer in nonintoxicating beer as  
52 provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer or party supply  
53 store which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class  
54 A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That  
55 any delicatessen, caterer, or party supply store licensed in both capacities must maintain average  
56 monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average  
57 monthly sales of nonintoxicating beer.

58 (f) A wine specialty shop under this article may also hold a wine tasting license authorizing  
59 the retailer to serve complimentary samples of wine in moderate quantities for tasting. ~~Such~~ The

60 wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or  
61 approved dues-paying members in good standing. ~~Such~~ The club shall meet on the wine specialty  
62 shop's premises not more than one time per week and shall either meet at a time when the  
63 premises are closed to the general public, or shall meet in a separate segregated facility on the  
64 premises to which the general public is not admitted. Attendance at tastings shall be limited to  
65 duly elected or approved dues-paying members and their guests.

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

69 (h)(A) The commissioner may issue a ~~special~~ license for the retail sale of wine at any  
70 festival or fair which is endorsed or sponsored by the governing body of a municipality or a county  
71 commission. ~~Such special~~ The license shall be issued for a term of no longer than 10 consecutive  
72 days and the fee therefor ~~shall be~~ is \$250 regardless of the term of the license ~~unless the applicant~~  
73 ~~is the manufacturer of said wine on a winery or a farm winery as defined in section five-a, article~~  
74 ~~one of this chapter, in which event the fee shall be \$50 if the event is held on the premises of the~~  
75 ~~winery or farm winery.~~ The application for the license shall contain information as required by the  
76 commissioner ~~may reasonably require~~ and shall be submitted to the commissioner at least 30  
77 days prior to the first day when wine is to be sold at the festival or fair.

78 (B) Notwithstanding §60-8-3(h)(A) of this code, if the applicant for the festival or fair license  
79 is the manufacturer of a wine, a winery, or a farm winery, as defined in §60-1-5a of this code, and  
80 the event is located on the premises of a winery or a farm winery then the license fee is \$50.

81 (C) A licensed winery or a farm winery, licensed under this subsection who has the festival  
82 or fair licensee's written authorization and approval from the commissioner, may, in addition to,  
83 or in conjunction with, the festival and fair licensee, exhibit, conduct complimentary tastings, or  
84 sell samples not to exceed a reasonable serving of three, one-fluid ounce, and may sell wine  
85 samples tastings or samples per patron, for consumption on the premises during the operation of

86 a festival or fair only; and may sell wine for off-premises consumption: *Provided,* That for licensed  
87 wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales  
88 shall occur under the hours of operation as required in this article, except ~~that~~ on Sunday, tastings,  
89 samples, and off-premises sales are unlawful between the hours of 2:00 a. m. and 10:00 a. m.

90 (D) A ~~special~~ festival or fair license for a license fee of \$250 may be issued other than to  
91 a winery or a farm winery, but may be issued to a “wine club” as defined ~~herein below~~ in this  
92 subdivision. The festival or fair committee or the governing body shall designate a person to  
93 organize a club under a name which includes the name of the festival or fair and the words “wine  
94 club”. The license shall be issued in the name of the wine club. A licensee may not commence  
95 the sale of wine as provided in this subsection until the wine club has at least 50 dues-paying  
96 members who have been enrolled, and to whom membership cards have been issued. Thereafter,  
97 new members may be enrolled and issued membership cards at any time during the period for  
98 which the license is issued. A wine club licensed under the provisions of this subsection may sell  
99 wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall  
100 take place on premises or in an area cordoned or segregated so as to be closed to the general  
101 public, and the general public shall not be admitted to the premises or area. A wine club licensee  
102 under the provisions of this subsection ~~shall be authorized to~~ may serve complimentary samples  
103 of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct  
104 shipper where the wine may be consumed on the licensed premises of any Class A private wine  
105 retail license or private club, and further is subject to the penalties in this article.

106 (E) A ~~license~~ licensed winery or farm winery approved to attend a festival or fair license  
107 issued under the provisions of this ~~subsection~~ section and the licensee holding the license, or the  
108 licensed winery or farm winery approved to attend a licensed festival or fair, ~~shall be~~ is subject to  
109 all other provisions of this article and the rules and orders of the commissioner relating to the  
110 special license: *Provided,* That the commissioner may by rule ~~regulation~~, or order, provide for  
111 certain waivers or exceptions with respect to the provisions, rules ~~regulations~~ or orders as the

112 circumstances of each festival or fair may require, including, without limitation, the right to revoke  
113 or suspend any license issued pursuant to this section prior to any notice or hearing  
114 notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however,* That  
115 under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived  
116 nor shall any exception be granted with respect ~~thereto~~ to those provisions.

117 (F) A license issued under the provisions of this ~~subsection~~ section and the licensee  
118 holding the license is not subject to the provisions of §60-8-3(g) of this code.

119 (i) (A) The commissioner may issue a special license for the retail sale of wine in a  
120 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles  
121 the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the  
122 purpose of this subsection, “professional baseball stadium” means a facility constructed primarily  
123 for the use of a major or minor league baseball franchisee affiliated with the National Association  
124 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league  
125 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning  
126 on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless  
127 of the length of the term of the license. The application for the special license shall contain  
128 information ~~as required by the commissioner may reasonably require~~ as required by the commissioner and must be submitted to  
129 the commissioner at least 30 days prior to the first day when wine is to be sold at the professional  
130 baseball stadium. The special license may be issued in the name of the baseball franchisee or  
131 the name of the primary food and beverage vendor under contract with the baseball franchisee.  
132 These sales must take place within the confines of the professional baseball stadium: *Provided,*  
133 That the exterior of the area where wine sales may occur ~~are~~ is surrounded by a fence or other  
134 barrier prohibiting entry except upon the franchisee’s express permission, and under the  
135 conditions and restrictions established by the franchisee, so that the wine sales area is closed to  
136 free and unrestricted entry by the general public.

137 (B) A license issued under this subsection and the licensee holding the license is subject

138 to all other provisions of this article and the rules and orders of the commissioner relating to the  
139 special license: *Provided*, That the commissioner may by rule or order grant certain waivers or  
140 exceptions to those rules or orders as the circumstances of each professional baseball stadium  
141 may require, including, without limitation, the right to revoke or suspend any license issued  
142 pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of  
143 this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of  
144 this code, be waived nor shall any exception be granted concerning §60-8-20(c) or §60-8-20(d)  
145 of this code.

146 (C) The commissioner ~~has the authority to~~ may propose rules for legislative approval in  
147 accordance with §29a-3-1 *et seq.* of this code, to implement this subsection.

148 (j) A license to sell wine granted to a private wine bed and breakfast, private wine  
149 restaurant, private wine spa, or a private club under the provisions of this article entitles the  
150 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale  
151 accompanies the serving of food or a meal to its members and their guests in accordance with  
152 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private  
153 wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to  
154 purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to  
155 two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its  
156 members and their guests in accordance with the provisions of this article and in accordance with  
157 ~~regulations~~ rules promulgated by the commissioner for the purpose of consumption of ~~said the~~  
158 wine off premises: *Provided, however*, That for this article, food or a meal provided by the private  
159 licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity, or  
160 other fees is at least \$15: *Provided further*, That a licensed private wine restaurant or a private  
161 club may offer for sale for consumption off the premises, sealed bottles of wine to its customers,  
162 provided that no more than one bottle is sold per each person over 21 years of age, as verified  
163 by the private wine restaurant or private club, for consumption off the premises. ~~Such~~ The



164 licensees ~~are authorized to~~ may keep and maintain on their premises a supply of wine in quantities  
165 ~~as may be~~ appropriate for the conduct of their operations ~~thereof~~. Any sale of wine ~~so made shall~~  
166 ~~be~~ is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may  
167 also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.*  
168 of this code.

169 (k) With respect to §60-8-3(h), §60-8-3(i), §60-8-3(j), §60-8-3(o), and §60-8-3(p) of this  
170 code, the commissioner shall propose legislative rules for promulgation in accordance with the  
171 provisions of §29A-3-1 *et seq.* of this code, with regard to the form of the applications, the  
172 suitability of both the applicant and location of the licensed premises, and other legislative rules  
173 ~~deemed~~ considered necessary to carry the provisions of the subsections into effect.

174 (l) The commissioner shall propose legislative rules for promulgation in accordance with  
175 the provisions of §29A-3-1 *et seq.* of this code, to allow restaurants to serve wine with meals, and  
176 to sell wine by the bottle for off-premises consumption as provided in §60-8-3(j) of this code. Each  
177 licensed restaurant ~~so licensed~~ shall be charged an additional \$100 per year fee.

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

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

182 (o) A wine specialty shop under this article may also hold a wine sampling license  
183 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine  
184 specialty shop location during regular hours of business. The wine specialty shop may serve up  
185 to three complimentary samples of wine, consisting of no more than one-fluid ounce each, to any  
186 one consumer in one day. Persons serving the complimentary samples must be 21 years of age  
187 and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a  
188 representative of a distributor or registered supplier. Distributor and supplier representatives  
189 attending wine sampling events must be registered with the commissioner. No licensee,

190 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to  
191 any person less than 21 years of age or to a person who is physically incapacitated due to the  
192 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and  
193 secure permission from the commissioner for all wine sampling events one month prior to the  
194 event. Wine sampling events may not exceed six hours per calendar day. Licensees must  
195 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

196 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit  
197 corporations and associations allowing the sale and serving of wine, and may, if applicable, also  
198 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,  
199 when raising money for athletic, charitable, educational or religious purposes. Auction or  
200 auctioning, for this subsection, means any silent, physical act or verbal bid auction, but shall not  
201 include any action in violation of §47-20-10, §47-20-11, or §61-10-1 et seq. of this code. The  
202 license application shall contain information as required by the commissioner ~~may reasonably~~  
203 ~~require~~ and shall be submitted to the commissioner at least 30 days prior to the event. Wines  
204 used during these events may be donated by or purchased from a licensed retailer, a distributor  
205 or a farm winery. A licensed farm winery that: is authorized in writing by a representative of the  
206 duly-organized, nonprofit corporation and association which has obtained the one-day license; is  
207 in good standing with the state; and obtains the commissioner's approval prior to the one-day  
208 license event, may, in conjunction with the one-day licensee, exhibit, conduct complimentary  
209 tastings or sell samples not to exceed a reasonable serving of three, one-fluid ounce, tastings or  
210 samples per patron, for consumption on the premises during the operation of the one-day license  
211 event; and may sell certain sealed wine bottles manufactured by the licensed farm winery for off-  
212 premises consumption: *Provided*, That for a licensed farm winery at a licensed one-day event the  
213 tastings, samples and off-premises sales shall occur under the hours of operation as required in  
214 this article, except on Sunday, tastings, samples and off-premises sales are unlawful between the  
215 hours of 2:00 a. m. and 10:00 a. m., from the one-day licensee's submitted floor plan for the event

216 subject to the requirements in the code and rules. Under no circumstances may the ~~provision~~  
217 provisions of §60-8-20(c) or §60-8-20(f) of this code, be waived nor may any exception be granted  
218 with respect ~~thereto~~ to those provisions.

219 (q) The commissioner may issue special licenses to heritage fairs and festivals allowing  
220 the sale, serving, and sampling of wine from a licensed farm winery. The license application shall  
221 contain information required by the commissioner and shall be submitted to the commissioner at  
222 least 30 days prior to the event. Wines used during these events may be donated by or purchased  
223 from a licensed farm winery. Under no circumstances may the ~~provision~~ provisions of §60-8-20(c)  
224 of this code, be waived nor may any exception be granted with respect ~~thereto~~ to those provisions.  
225 The commissioner shall propose rules for legislative approval in accordance with §29A-3-9a of  
226 this code, to implement the provisions of this subsection.

227 (r)(1) The commissioner may issue a special license for the retail sale of wine in a college  
228 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and  
229 serve wine for consumption in a college stadium. For the purpose of this subsection, "college  
230 stadium" means a facility constructed primarily for the use of a Division I, II, or III college that is a  
231 member of the National Collegiate Athletic Association, or its successor, and used as a football,  
232 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued  
233 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending  
234 on the next following June 30, and its fee is \$250 regardless of the length of the term of the  
235 license. The application for the special license shall contain information ~~as~~ required by the  
236 commissioner ~~may reasonably require~~ and must be submitted to the commissioner at least 30  
237 days prior to the first day when wine is to be sold. The special license may be issued in the name  
238 of the National Collegiate Athletic Association Division I, II, or III college or university or the name  
239 of the primary food and beverage vendor under contract with that college or university. These  
240 sales must take place within the confines of the college stadium: *Provided*, That the exterior of  
241 the area where wine sales may occur are surrounded by a fence or other barrier prohibiting entry

242 except upon the college or university's express permission, and under the conditions and  
243 restrictions established by the college or university, so that the wine sales area is closed to free  
244 and unrestricted entry by the general public.

245 (2) A license issued under this subsection and the licensee are subject to the other  
246 requirements of this article and the rules and orders of the commissioner relating to the special  
247 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions  
248 to those rules or orders as the circumstances of each the college stadium may require, including,  
249 without limitation, the right to revoke or immediately suspend any license issued pursuant to this  
250 section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code:  
251 *Provided, however*, That §60-8-20(c) or §60-8-20 (d) of this code, may not be waived, nor shall  
252 any exception be granted concerning those subsections.

253 (3) The commissioner may propose rules for legislative approval in accordance with §29a-  
254 3-1 *et seq.* of this code, to implement this subsection.

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

1 It ~~shall be~~ 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 §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, or serve wine other than in the  
8 original package and by the drink, except as authorized in §60-6-8 of this code;

9 (c) For a licensee, his or her servants, agents, or employees to sell, furnish, or give wine  
10 to any person less than 21 years of age, or to a mental incompetent or person who is physically  
11 incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided*, That the  
12 provisions §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,  
14 serve, or give wine to any person;

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~~ a retailer shall not sell or deliver wine  
22 purchased or acquired from any source other than a distributor or farm winery licensed in this  
23 state: *Provided, however*, That nothing ~~herein~~ in this subsection is considered to prohibit sales of  
24 convenience between distributors licensed in this state ~~wherein~~ in which one distributor sells,  
25 transfers or delivers to another distributor a particular brand or brands for sale at wholesale, of  
26 which brand or brands the other distributor has been authorized by a licensed supplier to  
27 distribute. The commissioner shall ~~promulgate~~ propose legislative rules for promulgation in  
28 accordance with §29A-1-1 et seq. of this code, necessary to carry out the provision of this  
29 subsection;

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

32 (g) Nothing in this article, nor any rule ~~or regulation~~ of the commissioner, shall prevent or  
33 be considered to prohibit any licensee from employing any person who is at least 18 years of age  
34 to serve in any licensee's lawful employment, including the sale, service, or delivery of wine under  
35 the provisions of this article. With the prior approval of the commissioner, a licensee whose  
36 principal business is the sale of food or consumer goods or the providing of recreational activities,  
37 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,  
38 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ

39 persons who are less than 18 years of age but at least 16 years of age: *Provided*, That the  
40 person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:  
41 *Provided, however*, That the authorization to employ persons under the age of 18 years shall be  
42 clearly indicated on the licensee's license.

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

1 It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine  
2 bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants,  
3 agents or employees to sell or deliver wine between the hours of 2:00 a. m. and 1:00 p. m., or, it  
4 shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant  
5 or private wine spa, his or her servants, agents or employees to sell wine between the hours of  
6 2:00 a. m. and 10:00 a. m. ~~in any county upon approval as provided for in section three pp, article~~  
7 ~~one, chapter seven of this code~~, on Sundays, or between the hours of 2:00 a. m. and 7:00 a. m.  
8 on weekdays and Saturdays.

**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~~ on the premises any minor under the age of 18 years, unless  
5 accompanied by his or her parent or guardian, is guilty of a misdemeanor and, on conviction  
6 thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from  
7 this prohibition for: (1) a private club and carryout, private hotel, private resort hotel, and private  
8 golf club licensed pursuant to §60-7-1 *et seq.* of this code, and in compliance with ~~subdivision (8),~~  
9 ~~subsection (f), section two of said article~~ §60-7-2 of this code; (2) a private club with more than

10 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that  
11 has been approved by the Alcohol Beverage Control Commissioner and which has designated  
12 certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer  
13 areas, as noted in the licensee's floorplan; or (3) a private club and carryout or private fair and  
14 festival that is in compliance with §60-7-2 of this code, by using a mandatory carding or  
15 identification program by which all members or guests being served or sold alcoholic liquors,  
16 nonintoxicating beer, or nonintoxicating craft beer, are asked for and must provide their proper  
17 identification to verify their identity and, further that they are of legal drinking age, 21 years of age  
18 or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating  
19 craft beer.