

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 561

SENATORS TRUMP, TAKUBO, AND BOSO, *original*

sponsors

[Originating in the Committee on the Judiciary;

Reported on February 23, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-6-8, and §60-
3 6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and
4 §60-7-12 of said code; to amend said code by adding thereto two new sections,
5 designated §60-7-6a and §60-7-8a; and to amend and reenact §61-8-27 of said code, all
6 relating to permitting the Alcohol Beverage Control Administration to request the
7 assistance of law enforcement; implementing a \$100 operations fee and establishing
8 special revenue account and fund; clarifying that consumption of alcoholic liquors in public
9 is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink; clarifying
10 certain licensing requirements for licensure; clarifying prohibition on liquor bottle sales in
11 Class A licenses; providing guidance on certain lawful conduct such as wine bottle sales
12 and frozen drink machines; creating a private fair and festival license; definitions; license
13 requirements; license fee; creating the private hotel license and license fee; creating a
14 private nine-hole golf course license and fee; definitions; license requirements; license
15 fee; permitting a private resort hotel to have inner-connection with a resident brewer who
16 has a brewpub; providing a 30-day requirement to issue or deny a completed license
17 application; creating a reactivation fee for licensees who fail to timely file their renewal
18 application and pay their annual license fees; permitting a license privilege for certain
19 licensees to operate a connected but separately operated Class A on-premises license
20 and a Class B off-premises license; clarifying that certain state-licensed gaming is
21 permissible in a private club; and permitting minors to attend a private hotel, private nine-
22 hole golf course, and a private fair or festival under certain conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-17a. Law enforcement cooperation.

1 In addition to the assistance of law enforcement provided under §15-2-12 of this code, the
2 commissioner may obtain assistance in the enforcement of §11-16-1 et seq. and §60-1-1 et seq.
3 of this code from county or municipal law-enforcement agencies by making a written request
4 therefor. The assistance authorized by this section may not be unreasonably withheld. Any law
5 enforcement officer acting pursuant to this section may further act upon crimes committed in his
6 or her presence.

§60-2-17b. Wine and liquor operating fund established; operations fee; fund issues.

1 (a) As of July 1, 2019, there is an annual nonrefundable and nonprorated operational fee
2 of \$100 for all distilleries, mini-distilleries, wineries, farm wineries, Class A retail licensees, Class
3 B retail licensees, private clubs, private wine retailers, wine specialty shops, wine restaurants,
4 private wine spas, private wine bed and breakfasts, wine suppliers, and wine distributors which
5 shall be paid on or before July 1, 2019, and every July 1 thereafter. All fees collected by the
6 commissioner pursuant to this section shall be deposited in a special revenue account in the State
7 Treasury, hereby created, to be known as the Wine and Liquor Operations Fund. Moneys in the
8 fund may only be expended by the commissioner for the administration of this chapter, as
9 appropriated by law.

10 (b) Licensees holding multiple licenses for nonintoxicating beer, nonintoxicating craft beer,
11 wine, or liquor shall be subject to paying only one operations fee of \$100 under this chapter and
12 under §11-16-10(d) 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 or tender 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 liquid;

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

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

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

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

18 A person who violates any provision of this section shall be guilty of a misdemeanor and,
19 upon conviction, shall be fined not less than \$50 nor more than \$500, or confined in jail not less
20 than 30 days nor more than one year or both such fine and imprisonment, for the first offense.
21 Upon conviction of a second or subsequent offense, the court may in its discretion impose a
22 penalty of confinement in the penitentiary for a period not to exceed three years. A person who
23 violates any provision of this section for the second or any subsequent offense under this section,
24 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
25 for a period not to exceed three years.

26 An indictment for any first violation of subdivisions (1), (2) and (3) of this section, or any of
27 them, shall be sufficient if in form or effect as follows:

28 State of West Virginia

29 County of, to wit:

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

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

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

1 A licensed person shall not:

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

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

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

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

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

11 (6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the
12 alcoholic liquors' original container: *Provided*, That Class A licensees licensed under §60-7-1 *et*
13 *seq.* and §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons
14 as part of a meal made of freshly prepared food;

15 (7) Sell, furnish, tender, or serve premixed alcoholic liquor that is not in the original
16 container: *Provided*, That a licensee may sell, furnish, tender, and serve premixed beverages
17 consisting of alcoholic liquors, nonalcoholic mixer, and ice if:

18 (A) The frozen drink mixing machine is emptied and sanitized daily; and

19 (B) That a written record reflecting the cleaning and sanitizing of the frozen drink machine
20 is maintained for inspection by the commissioner and health inspectors;

21 ~~(6)~~ (8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions
22 of this chapter;

23 ~~(7)~~ (9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered
24 alcohol;

25 ~~(8)~~ (10) Keep on the premises covered by his or her license alcoholic liquor other than that
26 which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

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

5 (4) Operate a business without a license issued under §60-1-1 et seq. of this code which
6 facilitates the consumption of alcoholic liquors by providing for on-site items such as cups,
7 glasses, ice, nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site
8 storage of alcoholic liquors;

9 ~~(4)~~(5) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not
10 bearing stamps or seals of the commissioner, without having first obtained written authority from
11 the commissioner therefor; or

12 ~~(5)~~(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the
13 provisions of this chapter.

14 (b) Any law-enforcement officer may arrest without a warrant and take the following
15 actions against a person who, in his or her presence, violates subdivision (1), subsection (a) of
16 this section: (1) If there is some nonintoxicated person who will accept responsibility for the
17 intoxicated person, the officer may issue the intoxicated person a citation specifying a date for
18 appearance before a judicial officer and release him or her to the custody of the individual
19 accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever
20 feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance
21 of a citation, transport the individual to the individual's present residence or arrange for the
22 transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1)
23 and (2) of this subsection are not possible, the officer shall transport or arrange for transportation
24 to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-
25 enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for
26 transportation by ambulance or otherwise to a hospital emergency room. The officer shall
27 accompany the individual until he or she is discharged from the emergency room or admitted to
28 the hospital. If the individual is released from the emergency room, the officer may proceed as
29 described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the
30 hospital, the officer shall issue a citation to the individual specifying a date for appearance before
31 a judicial officer.

32 (c) Upon presentment before the proper judicial officer, the law-enforcement officer serves
33 as the chief complaining witness. The judicial officer shall determine if there is probative evidence
34 that the individual may be guilty of the charge of public intoxication. If such evidence is not

35 presented, the charge shall be dismissed and the individual released. If sufficient evidence is
36 presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the
37 individual. Once a warrant or summons has been issued, the following actions may be taken:

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

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

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

43 (d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until
44 complaint may be made before a judicial officer and a warrant or summons issued, any person
45 who in the presence of the law-enforcement officer violates any one or more of subdivisions (1)
46 through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use
47 reasonable force to prevent harm to himself or herself, the individual arrested, or others in carrying
48 out the provisions of this section.

49 (e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a
50 misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance
51 with the following options:

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

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

60 (3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100
61 and not less than five nor more than 60 days in jail or a fine of not less than \$5 nor more than
62 \$100 and completion of not less than five hours of alcoholism counseling at the nearest
63 community mental health — mental retardation center: *Provided*, That three convictions for public
64 intoxication within the preceding six months is considered evidence of alcoholism. For the
65 educational counseling programs described in this subsection the community mental health —
66 mental retardation center may charge each participant its usual and customary fee and shall
67 certify in writing to the referring judicial officer the completion or failure to complete the prescribed
68 program for each individual.

69 (f) A person charged with a violation of subdivision (1), subsection (a) of this section who
70 is an alcoholic shall be found not guilty by reason of addiction and proper disposition made
71 pursuant to §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this code.

72 (g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a
73 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100;
74 and upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more
75 than \$100, or confined in jail not more than 60 days, or both.

76 (h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a
77 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100,
78 or confined in jail not more than 60 days, or both.

79 (i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of
80 a misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor more
81 than \$500; and upon conviction of second or subsequent offense, he or she is guilty of a felony
82 and, shall be confined in a state correctional facility for a period of not less than one year nor more
83 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 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, county
33 or municipal park or at any airport, in which building or premises a club has been established, to
34 which club are admitted only duly elected and approved dues-paying members in good standing
35 and their guests while in the company of a member and to which club the general public is not
36 admitted, and which maintains in connection with the club a suitable kitchen and dining facility
37 and related equipment and employs a sufficient number of persons for serving meals in the club
38 to the members and their guests.

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

42 (1) Has at least 100 members;

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

46 (3) Shall prepare, provide, or engage a food caterer to provide adequate freshly prepared
47 food or meals to serve its stated members and guests who will be attending the temporary festival,
48 fair, or other event, and further shall provide any documentation or agreements of such to the
49 commissioner prior to approval;

50 (4) Shall not use third-party entities or individuals to purchase, sell, furnish, or serve
51 alcoholic liquors (liquor and wine), nonintoxicating beer, or nonintoxicating craft beer;

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

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

57 (7) Utilizes an age verification system approved by the commissioner.

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

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

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

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

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

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

74 (6) Lists in the application referenced in subdivision (5) of this subsection the entire
75 property and all adjoining buildings and structures on the private hotel's floorplan which would
76 comprise the licensed premises, which would be authorized for the lawful sales, service, and
77 consumption of alcoholic liquors throughout the licensed premises whether these activities were

78 conducted in a building or structure or outdoors while on the private hotel's licensed premises and
79 as noted on the private hotel's floorplan;

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

83 (8) Utilizes an age verification system approved by the commissioner.

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

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

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

89 (3) Operates a restaurant and full kitchen with ovens, six-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 25 hours per week;

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

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

99 (6) Lists the entire property from subdivision (5) of this subsection and all adjoining
100 buildings and structures on the private resort hotel's floorplan which would comprise the licensed
101 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic
102 liquors throughout the licensed premises whether these activities were conducted in a building or

103 structure or outdoors while on the private resort hotel's licensed premises and as noted on the
104 private resort hotel's floorplan;

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

107 (8) Utilizes an age verification system approved by the commissioner; and

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

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

114 (1) Has at least ~~one thousand~~ 100 members;

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

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

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

124 (5) Lists the entire property from subdivision (4) of this subsection and all adjoining
125 buildings and structures on the private golf club's floorplan which would comprise the licensed
126 premises, which would be authorized for the lawful sales, service, and consumption of alcoholic
127 liquors throughout the licensed premises whether these activities were conducted in a building or

128 structure or outdoors while on the private golf club's licensed premises and as noted on the private
129 golf club's floorplan;

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

132 (7) Utilizes an age verification system approved by the commissioner.

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

135 (1) Has at least 50 members;

136 (2) Maintains at least one nine-hole golf course with separate and distinct golf playing
137 holes and offers golf carts, whether electric or gasoline;

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

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

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

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

153 (7) Utilizes an age verification system approved by the commissioner.

154 The Department of Natural Resources, the authority governing any county or municipal
155 park, or any county commission, municipality, other governmental entity, public corporation or
156 public authority operating any park or airport may lease as lessor a building or portion thereof or
157 other limited premises in any such park or airport to any corporation or unincorporated association
158 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 sell, tender, and serve alcoholic liquors by the drink, other than in sealed packages,
3 but does not include bottle or original container sales of alcoholic liquors to patrons, for
4 consumption on the premises of the licensees, to their members and their guests in accordance
5 with the provisions of this article, rules of the commissioner, and as authorized under §60-6-8 of
6 this code. The licensees may keep and maintain on their premises a supply of those lawfully
7 acquired alcoholic liquors in such quantities as may be appropriate for the conduct of operations
8 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 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 is
8 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 affiliation;

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

13 (8) Accurate and complete ownership information;

14 (9) An attestation that the information in the application is true and accurate; and

15 (10) Such other information as the commissioner may reasonably require which shall
16 include, but not be limited to, the criminal records, if any, of each member of the applicant's
17 governing board and/or its officers and directors who have been convicted of a felony or a crime
18 involving moral turpitude.

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 and by a bond of the applicant in the penal sum of \$5,000 with a
23 corporate surety authorized to transact business in the state of West Virginia, payable to the State
24 of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed
25 and on the faithful performance of and compliance with the provisions of this article.

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

28 (d) No license to operate a private club will be issued to applicants who discriminate
29 against any person or group of persons because of race or color of such person or group of
30 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 completed application and whether
4 applicant is a bona fide private club of good reputation in the community in which it shall operate.
5 For the purpose of conducting such investigation, the commissioner may withhold the granting or
6 refusal to grant such license for a period not to exceed 30 days or until the applicant has
7 completed the conditions set forth in this article and in §60-7-4(a) of this code, all as determined
8 by the commissioner. If it shall appear that such applicant is a bona fide private club of good
9 reputation in the community in which it shall operate and that there is no false statement, no
10 material misrepresentations, no hidden ownership, or persons with an undisclosed pecuniary
11 interest, and no omissions or failures to disclose in such application as determined by the
12 commissioner, the commissioner he or she shall issue a license authorizing the applicant to sell
13 alcoholic liquors as provided in §60-7-3 of this code, and otherwise shall refuse to issue such
14 license, except that in the case of an application by a corporation or association to operate a
15 private club in connection with:

16 (1) A state park, the Director of the Department of Natural Resources must grant his or
17 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 available to serve meals to
22 the general public. A license may not be issued for a private club in any county or municipal park,
23 or an airport, unless a dining facility comparable to the dining facility for the proposed private club
24 will be available to serve meals to the general public.

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

28 final the commissioner shall forthwith refund to the applicant his or her fees and bond
29 accompanying the application.

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

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

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

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

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

3 (b) The annual license fee for a license issued under the provisions of this article to a
4 private club other than a private club of the type specified in subsection (a) of this section shall be
5 \$1,000 if the private club has ~~less~~ fewer than 1,000 members, \$2,000 if the private club is a private
6 nine-hole golf course as defined in §60-7-2 of this code; \$2,500 if the private club has 1,000 or
7 more members, \$4,000 if the private club is a private hotel with three or fewer designated areas
8 or a private golf club as defined in §60-7-2 of this code, and further, if the private club is a private
9 resort hotel as defined in §60-7-2 of this code, said private resort hotel may designate areas within
10 the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as
11 provided for by this article. The annual license fee for a private resort hotel with five or fewer
12 designated areas shall be \$7,500, and the annual license fee for a private resort hotel with at least
13 six but no more than 10 designated areas shall be \$12,500. The annual license fee for a private
14 resort hotel with at least 11 but no more than 15 designated areas shall be \$17,500. The annual
15 license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas
16 shall be \$22,500: *Provided*, That a private resort hotel having obtained the license and paid the

17 \$22,500 annual license fee may, upon application to and approval of the commissioner, designate
18 additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per
19 designated area.

20 (c) The fee for any such license issued following January 1 of any year and to expire on
21 June 30 of such year shall be one half of the annual license fee prescribed by subsections (a)
22 and (b) of this section.

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

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

**§60-7-6a. Special privilege of Class A private club licensee to operate separate but
connected Class B license.**

1 A Class A private club licensee with 1,000 or more members may, in the commissioner's
2 discretion, operate Class B licenses for the off-premises sale of nonintoxicating beer and wine in
3 a connected but separately operated area of the Class A private club premises: *Provided*, That
4 each business is licensed separately and operates separate cash registers and maintains
5 separation barriers between the different licensed operations. Failure of a licensee to license two
6 innerconnected businesses shall subject the licensee to the penalties under this article.

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

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

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

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

8 (2) Shall make application with the commission at least 15 days pursuant to the private
9 fair, festival, or other event;

10 (3) Pay a nonrefundable nonprorated license fee of \$750; and

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

12 (c) A private fair and festival license under this section shall be for a duration of no more
13 than 10 consecutive days and no more than six licenses may be issued to the same person or
14 entity in a calendar year.

15 (d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served
16 pursuant to the license created by this section must be purchased from the licensed distributor
17 that services the area in which the private fair and festival is held or from a resident brewer acting
18 in a limited capacity as a distributor, all in accordance with §11-16-1 et seq. of this code.

19 (e) Wine sold, furnished, tendered, or served pursuant to the license created by this
20 section shall be purchased from a licensed distributor, winery, or farm winery in accordance with
21 §60-8-1 et seq. of this code.

22 (f) Liquor sold, furnished, tendered, or served pursuant to the license created by this
23 section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous
24 market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 et seq.
25 of this code.

26 (g) A licensee authorized by this section may utilize bona fide employees or volunteers to
27 sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

28 (h) Licensed representatives of a brewer, resident brewer, beer distributor, wine
29 distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker
30 representatives may attend a private fair and festival and discuss their respective products but
31 shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer,
32 nonintoxicating craft beer, wine, or liquor.

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

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

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

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

5 (2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper
6 entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine,
7 multiple coin console slot machine, or device in the nature of a slot machine; however, various
8 games, gaming, and wagering conducted by duly licensed persons of the West Virginia State
9 Lottery Commission, charitable bingo games conducted by duly licensed charitable or public
10 service organization, (or its auxiliaries) pursuant to §47-20-1 et seq. of this code, and charitable

11 raffle games conducted by a duly licensed charitable or public service organization (or its
12 auxiliaries) pursuant to §47-21-1 et seq. of this code, all of which are permissible on a licensee's
13 licensed premises when operated in accordance with this code, rules, and regulations;

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

17 (4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating
18 beer, wine, or alcoholic liquors, for or to any person known to be deemed legally incompetent, or
19 for or to any person who is physically incapacitated due to consumption of nonintoxicating beer,
20 wine or alcoholic liquor or the use of drugs;

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

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

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

30 (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or
31 approved dues paying member in good standing of said private club or a guest of such member;

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

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

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

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

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

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

1 Any proprietor or any person in charge of a dance house, concert saloon, theater,
2 museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors
3 are sold or given away, or any place of entertainment injurious to health or morals who admits or
4 permits to remain therein any minor under the age of 18 years, unless accompanied by his or her
5 parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a
6 fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private
7 hotel, private nine-hole golf course, private resort hotel, and private golf club licensed pursuant to
8 §60-7-1 *et seq.* of this code and in compliance with ~~subdivision (8), subsection (f), section two of~~
9 ~~said article~~ §60-7-2(g)(8), §60-7-2(h)(7), §60-7-2(i)(7), and §60-7-2(j)(7) of this code; ~~or (b) a~~

10 private club with more than 1,000 members that is in good standing with the Alcohol Beverage
11 Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner
12 and which has designated certain seating areas on its licensed premises as nonalcoholic liquor
13 and nonintoxicating beer areas, as noted in the licensee's floorplan; or (c) a private fair and festival
14 that is in compliance with §60-7-2(f)(7) of this code, by utilizing a mandatory carding or
15 identification program whereby all members or guests being served or sold alcoholic liquors,
16 nonintoxicating beer, or nonintoxicating craft beer are asked 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.