

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 97

BY SENATOR TRUMP

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

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, and §60-7-12 of said
9 code; to amend said code by adding thereto a new section, designated §60-7-8a; to
10 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 five 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; clarifying prohibition against
 57 bring your own bottle with exceptions for wine under certain circumstances; directing the
 58 commissioner to propose rules for allowing patrons to bring wine into licensed premises
 59 and restaurant facilities with an allowance for a corkage fee; stating that any such rule
 60 shall not take effect until approved by the Legislature; permitting the commissioner to
 61 sanction a licensee for failing to comply with the 48-hour notification requirement; and
 62 requiring 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 ~~rules~~ 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 ~~(17)~~ (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 ~~(18)~~ (19) "Person" means and includes an individual, firm, partnership, limited partnership,
110 limited liability company, association, or corporation.

111 ~~(19)~~ (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 ~~(21)~~ (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) ~~Fee Fees.~~ - ~~Commencing July 1, 2015, and by On~~ every July 1 thereafter, there is an
57 annual \$100 nonrefundable nonprorated 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, 2019, and every July 1 thereafter, there is an
60 additional annual nonrefundable and nonprorated 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 18 years of age to loiter in or upon any licensed premises; except, ~~however~~ that
81 the provisions of this subdivision do not apply where a person under the age of ~~eighteen~~ 18 years
82 is in or upon the premises in the immediate company of his or her parent or parents, or where
83 and while a person under the age of 18 years is in or upon the premises for the purpose of and
84 actually making a lawful purchase of any items or commodities ~~therein~~ sold upon the premises.
85 or for the purchase of and actually receiving any lawful service ~~therein~~ rendered upon the
86 premises. including the consumption of any item of food, drink, or soft drink ~~therein~~ lawfully
87 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 jail for not less than 30 days nor more than six months, or ~~by~~ both fined
106 and confined. Magistrates have concurrent jurisdiction with the circuit court and any other courts
107 having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

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

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

110 (B) Can demonstrate that it requires each employee, servant, or agent to verify the age of
111 any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the
112 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
113 set forth in §11-16-18(b) of this code; (ii) any administrative penalties from the commissioner; or
114 (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating
115 beer to an individual who is less than 21 years of age by one of his or her employees, servants,
116 or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away
117 nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties
118 of §11-16-18(b) of this code. Any agent, servant, or employee who has improperly sold, furnished
119 or given away nonintoxicating beer to an individual less than 21 is subject to termination from
120 employment, and the employer shall have no civil liability for the termination.

121 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each
122 employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is
123 sold by providing evidence: (A) That it has developed a written policy which requires each
124 employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will

125 be sold, furnished, or given away; (B) that it has communicated this policy to each employee,
126 servant, or agent; and (C) that it monitors the actions of its employees, servants or agents
127 regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken
128 corrective action for any discovered noncompliance with this policy.

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

134 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or
135 be considered to prohibit any licensee from employing any person who is at least 18 years of age
136 to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as
137 defined in this article. With the prior approval of the commissioner, a licensee whose principal
138 business is the sale of food or consumer goods or the providing of recreational activities, including,
139 but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling
140 alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons
141 who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties
142 may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided*,
143 *however*, That the authorization to employ persons under the age of 18 years shall be clearly
144 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. 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 4- 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.

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

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

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

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

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

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

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

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

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

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

18 (b) Any person who violates any provision of this article, except §60-3A-24 of this code,
19 including, but not limited to, any provision of this section, or any rule promulgated by the board or
20 the commissioner, or who makes any false statement concerning any material fact, or who omits
21 any material fact with intent to deceive, in submitting an application for a retail license or for a
22 renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or
23 who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor
24 and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than
25 \$5,000, or ~~imprisoned~~ confined in jail for not less than 30 days nor more than one year, or both

26 fined and ~~imprisoned~~ confined. Magistrates have concurrent jurisdiction with the circuit courts for
 27 offenses under this article.

28 (c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits
 29 any retail licensee from employing any person who is at least 18 years of age to serve in any retail
 30 licensee's lawful employment at any retail outlet operated by ~~such~~ the retail licensee, or from
 31 having ~~such~~ that person sell or deliver liquor under the provisions of this article. With the prior
 32 approval of the commissioner, a retail licensee may employ persons at any retail outlet operated
 33 by such retail licensee who are less than 18 years of age but at least 16 years of age, but ~~such~~
 34 that persons duties shall not include the sale or delivery of liquor: *Provided*, That the authorization
 35 to employ ~~such~~ persons under the age of 18 years shall be clearly indicated on the retail license
 36 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 ~~no~~ 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 ~~(e)~~ (f) *Limitations on licensees.* — ~~No~~ A distillery or mini-distillery may not sell more than
 47 3,000 gallons of product at the distillery or mini-distillery location the initial two years of licensure.
 48 The 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 ~~no~~ 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 a correctional facility for a period not to exceed three years. A person who violates
24 any provision of this section for the second or any subsequent offense under this section, is guilty
25 of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a
26 period 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) 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 ~~(6)~~ (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 ~~(7)~~ (9) Sell, possess, possess for sale, furnish, or provide any powdered alcohol;

26 ~~(8)~~ (10) 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 (b) A person who violates any provision of this section shall be guilty of a misdemeanor
 29 and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500, or confined in
 30 jail not less than 30 days nor more than one year, or both fined and confined. Upon conviction of
 31 a second or subsequent offense, the court may ~~in its discretion,~~ impose a penalty of ~~confinement~~
 32 imprisonment in a state correctional facility for a period not to exceed three years. A person who
 33 violates any provision of this section for the second or any subsequent offense under this section,
 34 is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility
 35 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, 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 licensees'
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~~ 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~~ license, the commissioner shall make and enter an order
 26 denying ~~such 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~~ 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~~ license shall be ~~of such in a~~ form and design 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~~ 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.

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~~ is \$750.

3 (b) The annual license fee for a license issued under the provisions of this article to a
 4 private club other than a private club of the type specified in §60-7-6(a) of this code ~~shall be~~ is
 5 \$1,000, if the private club has less than 1,000 members, \$2,500, if the private club has 1,000 or
 6 more members, ~~or if the private club is a private club and carryout~~ \$4,000, if the private club is a
 7 private golf club as defined in §60-7-2 of this code. ~~and further~~ If the private club is a private hotel
 8 or private resort hotel as defined in §60-7-2 of this code, ~~said the~~ private hotel or private resort
 9 hotel may designate areas within the licensed premises for the lawful sale, service, and
 10 consumption of alcoholic liquors as provided for by this article. The annual license fee for private
 11 hotel with a maximum of three or fewer designated areas only is \$4,000. The annual license fee

12 for a private resort hotel with five or fewer designated areas ~~shall be~~ is \$7,500, and the annual
 13 license fee for a private resort hotel with at least six but no more than 10 designated areas ~~shall~~
 14 ~~be~~ is \$12,500. The annual license fee for a private resort hotel with at least 11 but no more than
 15 15 designated areas ~~shall be~~ is \$17,500. The annual license fee for a private resort hotel with no
 16 fewer than 15 nor more than 20 designated areas ~~shall be~~ is \$22,500: *Provided*, That a private
 17 resort hotel having obtained the license and paid the \$22,500 annual license fee may, upon
 18 application to and approval of the commissioner, designate additional areas for a period not to
 19 exceed seven days for an additional fee of \$150 per day, per designated area.

20 (c) The fee for any ~~such~~ license issued following January 1 of any year ~~and to expire~~
 21 expiring on June 30 of ~~such~~ that year shall be one-half of the annual license fee prescribed by
 22 §60-7-6(a) and §60-7-6(b) of this code.

23 (d) All ~~such~~ fees shall be paid by the commissioner to the State Treasurer and credited to
 24 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.

ARTICLE 8. SALE OF WINES.

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

1 (a) ~~No~~ 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. ~~No~~ A person may not be licensed simultaneously as a distributor and a retailer. ~~No~~ A
 6 person, except for a winery or farm winery, may not be licensed simultaneously as a supplier and
 7 a retailer. ~~No~~ 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 §60-
37 8-3(n) of this code;

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~~ 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~~
73 ~~applicant is the manufacturer of said wine on a winery or a farm winery as defined in section five-~~
74 ~~a, article one of this chapter, in which event the fee shall be \$50 if the event is held on the premises~~
75 ~~of the winery or farm winery.~~ The application for the license shall contain information as required
76 by the commissioner may reasonably require and shall be submitted to the commissioner at least
77 30 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~~ 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.

NOTE: The purpose of this bill is to modernize certain alcohol laws and clarify certain practices that are permitted and other practices that are prohibited.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.