

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3467

By Delegate Young

[Introduced February 14, 2023; Referred to the
Committee on Government Organization then the
Judiciary]

1 A BILL to amend and reenact §8-13-7 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §11-16-3, §11-16-11, §11-16-11c, and §11-16-16 of said code; to amend and
3 reenact §60-1-5a and §60-1-5c of said code; to amend and reenact §60-4-3a of said code;
4 to amend said code by adding thereto four new sections, designated §60-6-27 and §60-6-
5 28; to amend and reenact §60-8-16; and to amend said code by adding thereto a new
6 article, designated §60-10-1 and §60-10-2, all relating to allowing municipalities to
7 establish "entertainment zones" that would allow for bars and restaurants to sell drinks for
8 to-go consumption in designated areas; allowing nonresident business owners to open a
9 brewery; directing home sales of beer to be on equal footing with wine, cider, and liquor;
10 allowing retail liquor stores, beer stores, and wine stores to have direct-to-home sales;
11 removing ABV caps on wine, cider, and beer; removing background check and label
12 approval requirements for temporary brewery permit; allowing breweries with a temporary
13 license to sell to any retail store or bar/restaurant; separating the Tax Department from
14 ABCA; restricting employment to just one agency; removing fingerprinting requirement for
15 license/permit applications; providing oversight of ABCA and Tax Department from
16 unilaterally changing or modifying interpretations of state law/code, requiring the ABCA to
17 create an online label database; providing an online submission of ABCA documents and
18 applications; allowing ABCA licensees to pay for license applications/renewals with
19 standard business checks or credit/debit cards; requiring a 15-day maximum time period
20 for processing ABCA paperwork; allowing private clubs to batch cocktails and dispense
21 cocktails without additional approval from the ABCA; allowing wine, cider, and liquor to be
22 dispensed on patios/outdoor spaces; allowing stadiums and arenas to sell liquor and
23 cocktails; removing food sale requirements for carry out alcohol sales at bars and
24 restaurants; legalizing neon beer signs; allowing alcohol manufacturers to own more than
25 one facility; providing term limits for ABCA administration; providing for a third-party audit
26 of ABCA; forbidding the ABCA administration from contacting licensees by phone;

27 requiring the ABCA to announce compliance sweeps/stings/checks in the same manner
 28 that DUI checkpoints are announced; removing the monthly "account sweeping"
 29 requirement; adjusting the two percent gross tax on distilleries; providing for a license for
 30 art gallery beer and wine; and providing for a license for food hall that has separate sales
 31 for food and alcohol and shares a communal space.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

1 (a) (1) Every municipality shall have plenary power and authority to levy and collect a tax
 2 upon all purchases within such municipality of intoxicating liquors from the ~~Alcohol Beverage~~
 3 ~~Control Commission~~ State Tax Commissioner, from any person licensed to sell wine at retail to
 4 the public under the provisions of article eight, chapter sixty of this code, or from distributors
 5 licensed to sell or distribute wine pursuant to said article: *Provided*, That no municipality shall have
 6 authority to levy or collect any such tax on the intoxicating liquors sold by or purchased from
 7 holders of a license issued under the provisions of article seven, chapter sixty of this code:
 8 *Provided, however*, That no municipality shall have authority to levy or collect any such tax on
 9 purchases within such municipality of intoxicating liquors or wine in the original sealed package for
 10 the purpose of resale in the original sealed package if the final purchase of such intoxicating
 11 liquors or wine is subject to the tax imposed under this section, under section nine-d, article three,
 12 chapter sixty of this code, or under section twenty-one, article three-a of said chapter. This section
 13 shall not be interpreted to authorize a purchase for resale exemption in contravention of section
 14 nine-a, article fifteen, chapter eleven of this code. The tax shall be levied upon the purchaser and
 15 shall be added to and collected with the price of purchase. The tax shall not exceed five percent of
 16 the purchase price.

17 (2) A copy of any ordinance imposing the tax authorized by this section shall be certified by
18 the mayor of the municipality to the ~~West Virginia Alcohol Beverage Control Commissioner and to~~
19 the Tax Commissioner. ~~The West Virginia Alcohol Beverage Control Commissioner by appropriate~~
20 ~~rules and regulations shall provide for the collection of such tax upon all purchases within such~~
21 ~~municipality of intoxicating liquors from the Alcohol Beverage Control Commissioner, from any~~
22 ~~person licensed to sell wine at retail pursuant to the provisions of article eight, chapter sixty of this~~
23 ~~code, or from distributors licensed to sell or distribute wine pursuant to said article, and for~~
24 ~~distribution thereof to the respective municipalities for which the same shall be collected. Such~~
25 ~~rules and regulations shall provide that all such taxes shall be deposited with the State Treasurer~~
26 ~~and distributed quarterly by the Treasurer upon warrants of the Auditor payable to the municipality~~

27 (3) Every municipality shall have plenary power and authority to levy and collect a fee from
28 any private club licensee whose premises are situate therein as authorized in section seven,
29 article seven, chapter sixty of this code.

30 (b) For purposes of this section:

31 (1) "Original sealed package" means an original package, as defined in this article, bearing
32 an unbroken seal, as defined in this article. For purposes of this article, the term "original sealed
33 package" does not mean or include a case, shipping box, carton, bottle caddy, cargo container, or
34 any other packaging or container that is not in immediate physical contact with its liquid contents
35 and which is not a "container" as defined in this article;

36 (2) "Original package" means that container, as defined in this article, into which the
37 manufacturer or bottler of a given liquor or wine first placed a given wine or liquor immediately after
38 it was produced, which is intended by the manufacturer or bottler to be the container in which such
39 wine or liquor is to be sold;

40 (3) "Seal" means a piece of wax, foil, metal, plastic or paper affixed to a container of liquor
41 or wine in such a way that the seal must be broken when the container is opened. The purpose of a
42 seal is to show evidence of opening, tampering or alteration of the container. A seal bears some

43 combination of embossed, printed, engraved or impressed emblems, figures, symbols, words,
44 trademarks, stamps, medallions, marks, or letters for attestation or evidence of authenticity. A seal
45 is typically affixed to a package or container by the manufacturer or bottler of a given wine or liquor.
46 The term "seal" may include a seal provided by or specified by this state and required by law to be
47 affixed to a container of liquor or wine; and

48 (4) "Container" means a bottle, boxed wine box (including the liner, bag or bladder thereof),
49 cask, can, jug or other holder of liquor or wine, which is in immediate physical contact with the
50 liquid contents, and which is the only means by which its liquid contents are prevented from
51 flowing or leaking out of the holder, and which is intended to be the container in which such wine or
52 liquor is to be sold to final consumers.

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, imported, or transshipped by a brewer or
4 manufacturer, the labels of which have been registered and approved by the commissioner that is
5 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.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing,
8 importing, or transshipping 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 guidelines, a
14 portion of which premises is designated for retail sales of nonintoxicating beer or nonintoxicating
15 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 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 and
41 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 promulgated rules no longer has a valid franchise agreement. If a brewer has
45 reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may
46 appoint a successor distributor who accedes to all the rights of the cancelled or terminated
47 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 only
51 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 be
54 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, beer,
57 nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4 of this
58 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 no larger than 128 fluid ounces in size and
61 must be capable of being securely sealed. The growler is utilized 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, state,
66 and local law unless it is located in an area of the motor vehicle physically separated from the
67 passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant
68 seal, security tape, or other material, as approved by the commissioner, placed on or over the
69 growler's opening, which seal, security tape or other material is clearly marked with the date of the
70 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) "Manager" means an individual who is the applicant's or licensee's on-premises
80 employee, member, partner, shareholder, director, or officer who meets the licensure
81 requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively
82 manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full
83 and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties
84 include but are not limited to: Coordinating staffing; reviewing and approving payroll; ordering and
85 paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing
86 security staff, security systems, video and other security equipment; and any further acts or
87 actions involved in managing the affairs of the business, on behalf of owners, partners, members,
88 shareholders, officers, or directors.

89 (14) "Nonintoxicating beer" means all natural cereal malt beverages or products of the
90 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and

91 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
92 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at
93 least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by
94 weight, or 15 percent alcohol by volume, whichever is greater. The word "liquor" as used in chapter
95 60 of this code does not include or embrace nonintoxicating beer nor any of the beverages,
96 products, mixtures, or preparations included within this definition.

97 (15) "Nonintoxicating beer floor plan extension" means a temporary ~~one-day~~ extension of
98 an existing Class A licensee's floor plan to a contiguous, adjoining and bounded area, such as a
99 parking lot or outdoor area, which shall for the temporary period encompass the licensee's
100 licensed premises; further the license shall be endorsed or approved by the county or municipality
101 where the license is located; the license shall be in good standing with the commissioner, and
102 further such temporary event shall cease on or before midnight of the approved temporary one-
103 day event.

104 (16) "Nonintoxicating beer sampling event" means an event approved by the
105 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
106 pursuant to §11-16-11a of this code.

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

111 (18) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation
112 of barley, malt, hops, or any other similar product or substitute and containing not less than one
113 half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent
114 alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

115 (19) "Nonresident brewer" means any brewer or manufacturer of nonintoxicating beer or
116 nonintoxicating craft beer whose principal place of business and manufacture is located outside

117 the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of
118 nonintoxicating beer or nonintoxicating craft beer annually.

119 ~~(19)~~ (20) "Original container" means the container used by a resident brewer or brewer at
120 the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or
121 nonintoxicating craft beer for sale at wholesale.

122 ~~(20)~~ (21) "Person" means and includes an individual, firm, partnership, limited partnership,
123 limited liability company, association, or corporation.

124 ~~(24)~~ (22) "Private club" means a license issued pursuant to §60-7-1 *et seq.* of this code.

125 ~~(22)~~ (23) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
126 nonintoxicating craft beer whose principal place of business and manufacture is located in the
127 State of West Virginia and which does not brew or manufacture more than 25,000 barrels of
128 nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than
129 10,000 barrels thereof in the State of West Virginia annually.

130 ~~(23)~~ (24) "Retailer" means any person selling, serving, or otherwise dispensing
131 nonintoxicating beer and all products regulated by this article, including, but not limited to, malt
132 coolers at his or her established and licensed place of business.

133 ~~(24)~~ (25) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia
134 or the commissioner's designee.

**§11-16-11. Special license for festivals and fairs; license fee and application; license
subject to provisions of article; exceptions.**

1 The commissioner may issue a special license to be designated a Class S license for the
2 retail sale of nonintoxicating beer at a festival or fair, provided the festival or fair is sponsored or
3 endorsed by the governing body of either the municipality or of the county wherein the festival or
4 fair is to be conducted. Such special license shall be issued for a term of no longer than ten
5 consecutive days and the fee therefor shall be ~~\$250~~ \$50 regardless of the term of the license. The
6 application for such license shall contain such information as the commissioner may require and

7 shall be submitted to the commissioner at least 30 days prior to the first day upon which
8 nonintoxicating beer is to be sold at such festival or fair, and such permit shall extend for 10 days.

9 A license issued under the provisions of this section and the licensee holding such license
10 shall be subject to all other provisions of this article and the rules, regulations, and orders of the
11 commissioner relating to such special license: *Provided*, That the commissioner may by rule,
12 regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules,
13 regulations, or order as the circumstances of each such festival or fair may require, including,
14 without limitation, the right to revoke or suspend any license issued pursuant to this section prior to
15 any notice or hearing, notwithstanding the provisions of section twenty-four of this article:
16 *Provided, however*, That under no circumstances shall the provisions of subdivisions (1), (2) or (3),
17 subsection (a), section eighteen of this article, be waived nor shall any exception be granted with
18 respect thereto.

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

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

8 (b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements,
9 restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule or
10 order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or
11 orders as required by the circumstances of each festival or fair. The commissioner may revoke or
12 suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding

13 the provisions §11-16-23 and §11-16-24 of this code: *Provided, however,* That under no
14 circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this
15 code, be waived nor shall any exception be granted with respect to those provisions.

16 (c) A brewer or home brewer, regardless of its designation in its domicile state, that is
17 duly licensed and in good standing in its domicile state, but unlicensed in this state, or an
18 unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a ~~\$150~~ \$50
19 nonrefundable and non-prorated fee and submit an application for a temporary license on a ~~one-~~
20 10 day basis. The temporary special license allows the unlicensed brewer or home brewer to sell
21 nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and
22 sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the
23 licensed fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate
24 markup on the nonintoxicating beer or nonintoxicating craft beer.

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

34 (3) The applicant shall include in its application a list of all nonintoxicating beers or
35 nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival
36 for sampling or sale so that the commissioner may review them in the interest of public health and
37 safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list
38 creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to

39 two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional fee.

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

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

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

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

62 (8) The licensee is subject to all applicable violations and/or penalties under this article and
63 related legislative rules that are not otherwise excepted by this section: *Provided*, That the
64 commissioner may by rule or order provide for certain waivers or exceptions with respect to the

65 provisions of this code, rules, or orders required by the circumstances of each festival or fair. The
66 commissioner may revoke or suspend any license issued pursuant to this section prior to any
67 notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code:
68 *Provided, however,* That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-
69 8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect
70 to those provisions.

§11-16-16. ~~Restrictions on nonresident~~ Nonresident brewers, manufacturers and distributors.

1 ~~No brewer or manufacturer whose chief place of business is outside the State of West~~
2 ~~Virginia shall offer for sale or sell nonintoxicating beer, in the State of West Virginia, or offer any of~~
3 ~~the same for shipment into this state, except to a distributor who is duly licensed under this article,~~
4 ~~and no such brewer or manufacturer shall consign, ship or deliver any of the same to any person~~
5 ~~within the State of West Virginia, or sell and deliver the same outside the State of West Virginia to~~
6 ~~be transported into the State of West Virginia, except to a duly licensed distributor for delivery at~~
7 ~~the place of business of such distributor as set forth in such brewer's or manufacturer's license. No~~
8 ~~such brewer or manufacturer shall have any interest in the business of any distributor or retailer,~~
9 ~~nor be connected directly or indirectly with any distributor or retailer. Every such brewer or~~
10 ~~manufacturer shall mail to the commissioner on or before the tenth day of each calendar month, a~~
11 ~~sworn statement showing all such sales and shipments of nonintoxicating beer made by such~~
12 ~~brewer or manufacturer during the preceding calendar month. If any such brewer or manufacturer~~
13 ~~shall violate any of the provisions of this article or shall violate any of the rules, regulations, or order~~
14 ~~of the commissioner, such brewer or manufacturer shall be punished in like manner as provided~~
15 ~~for any nonresident brewer who shall violate any provisions of this section. If any such brewer shall~~
16 ~~violate any of the provisions of this article, he shall not be permitted to sell, ship or deliver any~~
17 ~~nonintoxicating beer to any distributor or to otherwise engage in any business authorized by this~~
18 ~~article for a period of not to exceed one year from the date the notice shall be mailed to such~~

19 ~~brewer or manufacturer by the commissioner of the fact that such brewer or manufacturer has~~
 20 ~~violated the provisions of this article or such rules, regulations, or orders of the commissioner.~~
 21 ~~During such period of one year it shall be unlawful for any distributor or manufacturer or for any~~
 22 ~~other person within the jurisdiction of the State of West Virginia, to buy or receive from such brewer~~
 23 ~~or manufacturer any nonintoxicating beer or have any dealings with such brewer or manufacturer~~
 24 ~~with respect thereto. A distributor, who has not qualified with residence requirements of this article~~
 25 ~~or whose chief place of business is outside the State of West Virginia shall not sell, ship, transport,~~
 26 ~~convey or deliver, or cause to be sold, shipped, transported, conveyed or delivered, directly or~~
 27 ~~indirectly, any nonintoxicating beer to any distributor within the State of West Virginia. If any such~~
 28 ~~distributor shall violate any of the provisions of this article, he shall be punished in like manner as~~
 29 ~~provided for any nonresident brewer or manufacturer who shall violate any provisions of this~~
 30 ~~section~~

1 Nonresident brewers and manufacturers shall be entitled to the same benefits and
 2 obligations provided to resident brewers in this state as provided for in this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-1-5a. Farm wineries defined.

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

9 ~~alcohol by volume and shall be matured in wooden barrels or casks~~

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

§60-1-5c. Alternating wine proprietorships; requirements and limitations.

1 (a) Notwithstanding the provisions of §60-1-5 of this code, a licensed winery or farm winery
2 may be a party to an alternating wine proprietorship agreement subject to the provisions of this
3 section. As used in this section, "alternating wine proprietorship agreement" means an agreement
4 between a licensed winery or farm winery and a farm entity which allows the farm entity to use the
5 premises of the licensed farm winery to produce wine.

6 (b) For an alternating wine proprietorship agreement to be lawful:

7 (1) The farm winery and the farm entity must be in compliance with applicable state laws
8 and rules promulgated thereunder;

9 (2) The agreement must be between a licensed winery or farm winery and a farm entity
10 located and operating in this state;

11 (3) The farm entity must produce agricultural products containing sugar as certified by the
12 Agriculture Commissioner and required by law;

13 (4) Wines produced by the parties must be maintained in separate bonded areas and shall
14 not be comingled;

15 (5) The farm entity participating in the agreement must separately meet all federal and

16 state requirements for a winery or farm winery;

17 (6) The farm entity party to the agreement may not produce more than 50,000 gallons of
18 wine and nonfortified dessert wine;

19 (7) Wine produced by the farm entity party to an agreement must be produced exclusively
20 by natural fermentation;

21 (8) If port, sherry, or madeira wines are produced by the farm entity party to the agreement,
22 a minimum of 25 percent of the agricultural products used to make the wine must be produced on
23 the farm entity's property and no more than 25 percent of the agricultural products used may come
24 from an out-of-state source; and

25 ~~(9) Port, sherry, or madeira wine produced by a party to an alternating wine proprietorship~~
26 ~~agreement may not exceed 22 percent alcohol by volume and must be matured in wooden barrels~~
27 ~~or casks~~

28 (c) The commissioner shall propose rules for promulgation in accordance with §29A-3-1 *et*
29 *seq.* of this code necessary to effectuate the provisions of this section.

ARTICLE 4. LICENSES.

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

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

11 law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and
12 serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise
13 determined by the residents of the county pursuant to §7-1-3ss of this code.

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

19 (c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay
20 all taxes and fees required of licensed retailers and meet applicable licensing provisions as
21 required by this chapter and by rule of the commissioner, except for payments of the wholesale
22 markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all
23 liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises
24 consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment
25 fee to be paid to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-
26 distillery, or micro-distillery shall not be priced less than the price set by the commissioner
27 pursuant §60-3A-17 of this code.

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

36 (e) *Limitations on licensees.* — A distillery, mini-distillery, or micro-distillery may not sell

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

49 (f) Building code and tax classification- Notwithstanding any provision of this code to the
 50 contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this
 51 article on a property does not change the nature or use of the property which otherwise qualifies as
 52 agricultural use for building code and property tax classification purposes.

§60-6-27. Direct to home sale of alcohol permitted by retail establishments.

1 Retail liquor stores, beer stores, and wine stores are hereby permitted to conduct direct-to-
 2 home sales, so long as other regulations enumerated in this chapter are followed.

§60-6-28. Alcohol Beverage Control Administration Modernization.

1 (a) The Alcohol Beverage Control Administration ("ABCA") shall remove the fingerprinting
 2 requirement for license/permit applications.

3 (b) The ABCA shall create an online label database.

4 (c) The ABCA shall allow the online submission of ABCA documents and applications.

5 (d) ABCA licensees may pay for license applications/renewals with standard business
 6 checks or credit/debit cards.

7 (e) The ABCA shall institute a 15-day maximum time period for processing ABCA
8 paperwork.

9 (f) The ABCA shall allow private clubs to batch cocktails and dispense cocktails without
10 additional approval from the ABCA.

11 (g) The ABCA shall permit wine, cider, and liquor to be dispensed on patios and outdoor
12 spaces.

13 (h) The ABCA shall remove any associated food sale requirements for carry out alcohol
14 sales at bars and restaurants.

15 (i) The ABCA shall legalize neon beer signs to be utilized by retail establishments for the
16 sale of alcohol.

17 (j) The ABCA shall allow alcohol manufacturers to own more than one facility, such as a
18 brewery or distillery.

19 (k) There shall every three years be conducted a third-party audit of ABCA to ensure that
20 the ABCA follows equity of enforcement, maintaining a just and safe workplace. The ABCA shall
21 disclose audit findings to the public and shall be available for review on the ABCA website.

22 (l) The ABCA shall announce all compliance sweeps, stings, and checks in the same
23 manner provided for in this code that DUI checkpoints are announced to the public.

24 (m) *Art gallery and gift store beer and wine licensure:*

25 (1) The ABCA may issue an art gallery beer and wine license to a nonprofit or for-profit
26 retail business engaged in the display and sale of original artwork, or copies of original artwork that
27 are reproduced no more than 1,000 times, by an individual artist or a group of artists.

28 (2) The license holder may sell or serve beer and wine at retail for on-premises
29 consumption when snacks are served during normal business hours but not later than midnight.

30 (3) The annual license fee is \$100.

31 (4) The license may not be transferred from the location for which the license was originally
32 issued to another location.

33 (n) The ABCA shall add a license for a food hall that has separate sales for food and
34 alcohol and shares a communal space.

ARTICLE 8. SALE OF WINES.

§60-8-16. Application for license.

1 (a) Any person desiring a license under this article shall file a written application for a
2 license with the commissioner and in the application shall state under oath:

3 (1) The name of the applicant, including his or her trade name if any, his or her residence
4 address and the length of his or her residence;

5 (2) The address of the place of business for which the license is desired, or other
6 description that definitely locates it; and that the place of business conforms to all health and fire
7 laws and regulations applicable thereto;

8 (3) The name of the owner of the premises upon which the business is to be conducted
9 and, if the owner is not the applicant, that the applicant is the bona fide lessee of the business;

10 (4) If the application is for a retailer’s license, that the applicant is the proprietor or owner of
11 a bona fide grocery store, private wine bed and breakfast, private wine restaurant, private wine
12 spa, or wine specialty shop;

13 (5) That the applicant intends to carry on the business authorized by the license for himself
14 or herself or under his or her immediate supervision or direction;

15 (6) That the applicant is a citizen of the United States;

16 (7) That the applicant shall include a manager on the applicant’s license application, or a
17 licensee’s renewal application, and further that the manager shall meet all other requirements of
18 an applicant for licensure set forth in this section, including, but not limited to, United States
19 citizenship or naturalization, ~~passing a background investigation~~ being at least 21 years of age,
20 being a suitable person, being of good morals and character, and other requirements, all as set
21 forth in the code and the legislative rules, in order for the manager to be able to meet and conduct
22 any regulatory matters, including, but not limited to: Licensure or enforcement matters related to

23 the applicant or licensee all in the interest of protecting public health and safety and being a
24 suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in
25 any manager listed on an application must be made immediately to the commissioner, in order to
26 verify that the new manager meets licensure requirements;

27 (8) That the applicant is not less than 21 years of age;

28 (9) That the applicant has not been convicted of a felony or other crime involving moral
29 turpitude within the three years next preceding the filing of the application; and that he or she has
30 not, within the two years next preceding the filing of the application, been convicted of violating the
31 liquor laws of any state or of the United States;

32 (10) That the applicant has not during the five years next preceding the date of said
33 application had any license revoked under this chapter or under the liquor laws of any other state;

34 (11) If the applicant is a firm, association, partnership, limited partnership, limited liability
35 company, or corporation, the application shall state the matters required in subdivisions (6), (8),
36 (9), and (10) of this subsection, with respect to each of the members and the manager thereof, and
37 each of said members and the manager must meet all the requirements in said subdivisions;

38 (12) If the applicant is a corporation, organized or authorized to do business in this state,
39 the application shall state the matters required in subdivisions (6), (8), (9), and (10) of this
40 subsection, with respect to the manager and each of the officers and directors thereof, and any
41 stockholder owning 20 percent or more of the stock of the corporation and any other persons who
42 conduct and manage the licensed premises for the corporation. Each of said individuals must
43 meet all the requirements provided in those subdivisions except that the requirements as to
44 citizenship may not apply to the officers, directors, and stockholders of a corporation applying for a
45 retailer's license; and

46 (13) If the applicant is a trust or has a trust as an owner, the trustees or other persons in
47 active control of the activities of the trust relating to the license shall provide a certification of trust
48 as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts

49 described in §44D-10-1013(e) of this code and shall further state, under oath, the names,
50 addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that
51 the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the
52 certification of trust must state that the beneficiary's interest in the trust is represented by a trustee,
53 parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the
54 beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age.
55 Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal
56 guardian include in the certification of trust and state under oath his or her name, address, Social
57 Security number, and birth date.

58 (14) Any other information that the commissioner may reasonably require of the applicant,
59 or licensee, or the applicant or licensee's manager.

60 The foregoing statements required in an application are mandatory prerequisites for the
61 issuance of a license.

62 The application must be verified by the owner, manager, or in the case of a firm,
63 partnership, limited partnership, limited liability company, association, or trust, the members,
64 officers, trustees, or other persons in active control of the activities of the limited liability company,
65 association, or trust relating to the license. The application of a corporation applying for a retailer's
66 license need be verified only by its president or vice president.

67 (b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license
68 may be issued only upon submission by the trustees or other persons in active control of the
69 activities of the trust relating to the distributor license of a true and correct copy of the written trust
70 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
71 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
72 section is confidential and is not a public record and is not available for release pursuant to the
73 West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

ARTICLE 10. ENTERTAINMENT ZONES.

§60-10-1. Legislative findings.

1 (a) The Legislature finds that the enactment of "entertainment zones", or "designated
2 outdoor refreshment areas (DORAs)" can support the economic vitality of downtown areas in this
3 state. Local communities should work with their appropriate legislative authority to ensure that
4 public health and safety are being met when creating these establishments. Communities across
5 West Virginia's neighboring state of Ohio have created similar entertainment zones and "DORA"
6 districts and have found they can provide an additional attraction for patrons, create a destination
7 for dining and entertainment, and promote building a lively, pedestrian-friendly environment in the
8 area.

9 (b) Entertainment zones would allow West Virginia communities to designate areas where
10 open container restrictions are loosened, allowing people to buy, carry and drink alcoholic
11 beverages in specified outdoor areas. These entertainment zones can come in various sizes and
12 locations with varying limitations. The goal is to boost local economies. Entertainment zones
13 would boost foot traffic into town centers to create thriving social hubs that can benefit local
14 businesses.

§60-10-2. Establishment of entertainment zones.

1 (a) Counties and municipalities in this state may create "entertainment zones" to permit
2 bars and restaurants in their counties or municipalities to sell drinks for to-go consumption in
3 designated areas. A county or municipality may draw a mapped-out district in which patrons 21
4 and over purchase alcoholic beverages from approved restaurants and carry their drinks outside
5 and within the entertainment zone. Any person of legal age in an entertainment zone carrying an
6 open container of beer, wine, or liquor shall be exempt from prosecution under the "Open
7 Container Law" in this state if the drink was purchased from a participating entertainment zone
8 vendor.

9 (b) Counties and municipalities in this state who choose to create entertainment zones
10 within their communities shall not incur an additional licensing fee, but a standardized cup is

11 required to indicate that the patron purchased a drink within the entertainment zone.

NOTE: The purpose of this bill is to allow municipalities to establish "entertainment zones" that would allow for bars and restaurants to sell drinks for to-go consumption in designated areas. The bill allows non-resident business owners to open a brewery. The bill directs home sales of beer to be on equal footing with wine, cider, and liquor. The bill allows retail liquor stores, beer stores, and wine stores to have direct-to-home sales. The bill removes ABV caps on wine, cider, and beer. The bill removes background check and label approval requirements for temporary brewery permit. The bill allows breweries with a temporary license to sell to any retail store or bar/restaurant. The bill separates the Tax Department from ABCA. The bill restricts employment to just one agency. The bill removes fingerprinting requirement for license/permit applications. The bill provides oversight of ABCA and Tax Department from unilaterally changing or modifying interpretations of state law/code, requiring the ABCA to create an online label database. The bill provides an online submission of ABCA documents and applications. The bill allows ABCA licensees to pay for license applications/renewals with standard business checks or credit/debit cards. The bill requires a 15-day maximum time period for processing ABCA paperwork. The bill allows private clubs to batch cocktails and dispense cocktails without additional approval from the ABCA. The bill allows wine, cider, and liquor to be dispensed on patios/outdoor spaces. The bill allows stadiums and arenas to sell liquor and cocktails. The bill removes food sale requirements for carry out alcohol sales at bars and restaurants. The bill legalizes neon beer signs. The bill allows alcohol manufacturers to own more than one facility. The bill provides term limits for ABCA administration. The bill provides for a third-party audit of ABCA. The bill forbids the ABCA administration from contacting licensees by phone. The bill requires the ABCA to announce compliance sweeps/stings/checks in the same manner that DUI checkpoints are announced. The bill removes the monthly "account sweeping" requirement. The bill adjusts the two percent gross tax on distilleries. The bill provides for a license for art gallery beer and wine. Finally, the bill provides for a license for food hall that has separate sales for food and alcohol and shares a communal space.

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