

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5295

By Delegates W. Clark, Willis, Marple, Young,
Shamblin, Hornby, Hite, W. Hall, Maynor, E. Pritt, and
Lucas

[Introduced January 29, 2024; Referred to the
Committee on Economic Development and Tourism
then Government Organization]

1 A BILL to amend and reenact §8-12-26 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §60-7-2a, §60-7-8a, and §60-7-8g of said code; all relating to
 3 expressly authorizing a private outdoor designated area to simultaneously host multiple
 4 qualified permit holders, including but not limited to a special S2 licensed and properly
 5 insured private fair and festival.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
 RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL
 OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

§8-12-26. Authorizing municipalities to create private outdoor designated areas.

1 (a) In addition to all other powers and duties conferred by law upon municipalities,
 2 municipalities are empowered and authorized pass an ordinance establishing private outdoor
 3 designated areas as described in §60-7-8g of this code.

4 (b) The municipality shall include in the ordinance, at a minimum, all of the following:

5 (1) Requirements for the purpose of ensuring compliance with all state and municipal laws,
 6 and public health and safety within a private outdoor designated area;

7 (2) The proposed outdoor designated area or proposed licensed premises shall be
 8 indicated on a submitted map or survey in sufficient detail to identify the boundaries of the area,
 9 subject to the limitations in subsection (b) of this section;

10 (3) A general statement of the nature and types of qualified permit holders that may
 11 operate within the proposed outdoor designated area;

12 (4) That certain public property that is legally demarcated by the ordinance is within the
 13 proposed private outdoor designated area and such area is in compliance with the comprehensive
 14 plan or zoning ordinances of the municipality, if the municipality has so adopted, for the

15 consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer;

16 (5) The specific boundaries of the private outdoor designated area, including street
17 addresses;

18 (6) The number, spacing, and type of signage designating the private outdoor designated
19 area;

20 (7) The days and hours of operation for the private outdoor designated area which may not
21 be greater than, authorized by §11-16-1 *et seq.* and chapter 60 of this code, but may be less than;

22 (8) The estimated number of personnel needed to ensure public safety and efficient
23 operations in the private outdoor designated area;

24 (9) A sanitation plan that will help maintain the appearance and public health of the private
25 outdoor designated area, including the number of restrooms and trash receptacles.

26 (10) A requirement that liquor, wine, nonintoxicating beer, and nonintoxicating craft beer be
27 served in non-glass containers, not greater than 18 fluid ounces, approved by the municipality and
28 the commissioner as set forth in §60-7-8g of this code; and

29 (11) Public health and safety measures, and requirements to meet compliance with current
30 health permitting and zoning requirements.

31 (c) The municipality shall provide to the commissioner notice of the approval of the private
32 outdoor designated area and identify the qualified permit holders that will be applying for permits
33 set forth in §60-7-8g of this code. Notwithstanding any other section of the code, the ability for a
34 private outdoor designated area to simultaneously host multiple qualified permit holders as
35 defined in §60-7-1 *et seq.* of the code, is expressly authorized.

36 (d) The municipality shall be responsible for ensuring compliance with its ordinances and
37 compliance with all criminal laws associated with the operation of a private outdoor designated
38 area. The municipality shall provide the commissioner copies of all non-compliance and violations.
39 The commissioner shall ensure all qualified permit holders operate in accordance with
40 requirements set forth in §11-16-1 *et seq.* and chapter 60 of this code.

41 (e) The municipality shall have the authority to dissolve a private outdoor designated area
 42 by ordinance and further may suspend a private outdoor designated area immediately when in the
 43 interest of public safety.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.
§60-7-2a. Dual licensing permitted; conditions.

1 (a) A private coliseum or center may permit a private fair and festival licensee to conduct
 2 the temporary special event, authorized by that license, within, or on the private coliseum or center
 3 licensee's licensed premises in order to create tourism opportunities that will promote brewers,
 4 resident brewers, wineries, farm wineries, distilleries, mini-distilleries, and micro-distilleries in this
 5 state.

6 (b) A private coliseum or center licensee may host a special event for a private fair and
 7 festival licensee on the licensee's licensed premises if both licensees are in good standing with the
 8 commissioner and submit to the commissioner the temporary floorplan revisions of the private
 9 coliseum or center in which the special event would be held to comprise the special event's lawful
 10 premises, which shall only include spaces in buildings or rooms of the private coliseum or center's
 11 licensed premises. By contractual agreement between the private coliseum or center licensee and
 12 the private fair and festival licensee, the parties shall agree that the private coliseum or center
 13 maintains control of its licensed premises, but for a set contracted rental time period. The private
 14 fair and festival licensee shall safely account for the ingress and egress of the stated members and
 15 guests who will be attending the special event at the licensed premises. During the contracted
 16 rental time period, the private fair and festival licensee is wholly responsible and liable for the
 17 proper sale and serving of alcoholic liquors and nonintoxicating beer in the area designated as the
 18 private fair and festival's temporary floorplan, as set forth in this section. The private fair and
 19 festival's temporary floorplan shall comprise the private fair and festival's licensed premises for the

20 temporary special event, which is authorized for the lawful sale, service, and consumption of
21 alcoholic liquors and nonintoxicating beer throughout the private fair and festival's licensed
22 premises during this dually licensed temporary special event: *Provided*, That the private fair and
23 festival's licensed premises dually shared and licensed with the private coliseum or center shall:

- 24 (1) Have facilities to prepare and serve food and alcohol;
- 25 (2) Have adequate restrooms and sufficient building facilities for the expected number of
26 members and guests attending the event;
- 27 (3) Comply with all other requirements of its license in this article; and
- 28 (4) Comply with health, fire, safety, and zoning requirements.
- 29 (c) There is no limit on the number of private fair and festivals that may be held at a private
30 coliseum or center.

31 (d) The ability for a private outdoor designated area as defined in §8-12-26 of the code to
32 simultaneously host multiple qualified permit holders as defined in §60-7-1 et seq. of the code, is
33 expressly authorized.

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

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

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

- 6 (1) Be sponsored, endorsed, or approved by the governing body or its designee of the
7 county or municipality in which the private fair and festival or other event is located;
- 8 (2) Make application with the commissioner at least 15 days prior to the private fair, festival,
9 or other event;
- 10 (3) Pay a nonrefundable non-prorated license fee of \$500; and

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

12 (c) A private fair and festival license under this section shall be for a duration of no more than 10
13 consecutive days.

14 (d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served
15 for on-premises consumption by the private fair and festival pursuant to the license created by this
16 section shall be purchased from licensed distributors that service the area in which the private fair
17 and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in
18 accordance with §11-16-1 *et seq.* of this code. Sealed containers of nonintoxicating beer or
19 nonintoxicating craft beer may be sold for off-premises consumption if the nonintoxicating beer
20 and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set
21 forth in §11-16-6a(d) of this code, who manufactures the nonintoxicating beer or nonintoxicating
22 craft beer in this state. The off-premises consumption sales shall be made pursuant to a written
23 agreement between the private fair and festival and an authorized brewer or resident brewer. Prior
24 to the start of the private fair or festival, an authorized brewer or resident brewer who agrees to
25 offer off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer
26 from a booth or other facility on the private fair and festival's licensed premises must meet the
27 requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or
28 resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft
29 beer sold for off-premises consumption as set forth in §11-16-1 *et seq.* of this code. The authorized
30 and approved brewer, resident brewer, or its licensed representatives may give or sell approved
31 promotional items to private fair and festival members and guests, but not to the private fair and
32 festival's volunteers, independent contractors, or employees.

33 (e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by
34 the private fair and festival pursuant to the license created by this section shall be purchased from
35 a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq.* of this
36 code and §60-8A-1 *et seq.* of this code, as applicable. Sealed containers of wine or hard cider may

37 be sold for off-premises consumption if the wine or hard cider is is being sold by an authorized
38 winery or farm winery, as set forth in §60-4-3b(m) and §60-8A-5(c) of this code, who manufactures
39 that wine or hard cider in this state. The off-premises consumption sales shall be made pursuant to
40 a written agreement between the private fair and festival and an authorized winery or farm winery.
41 An authorized winery or farm winery who agrees to offer their wine or hard cider for off-premises
42 consumption sales from a booth or other facility on the private fair and festival's licensed premises
43 prior to the start of the private fair or festival shall meet the requirements of §60-4-3b(m) and §60-
44 8A-5(c) of this code, as applicable. The written agreement with each authorized winery or farm
45 winery shall account for lawful sales of wine or hard cider sold for off-premises consumption as set
46 forth in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. The
47 authorized and approved winery, farm winery or its licensed representatives may give or sell
48 approved promotional items to private fair and festival members and guests, but not to the private
49 fair and festival's volunteers, independent contractors, or employees.

50 (f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private
51 fair and festival pursuant to the license created by this section shall be purchased from a licensed
52 retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is
53 occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sealed containers of liquor may be
54 sold for off-premises consumption if the liquor is being sold by an authorized distillery, mini-
55 distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures their liquor in
56 this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-
57 3a(c) of this code shall not apply to these sales. The off-premises consumption sales shall be
58 made pursuant to a written agreement between the private fair and festival and an authorized
59 distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or micro-
60 distillery who agrees to offer off-premises consumption sales of their manufactured liquor from a
61 booth or other facility on the private fair and festival's licensed premises prior to the start of the
62 private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this

63 code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery shall
64 account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 of this
65 code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed
66 representatives may give or sell approved promotional items to private fair and festival members
67 and guests, but not to the private fair and festival's volunteers, independent contractors, or
68 employees.

69 (g) A licensee authorized by this section may use bona fide employees, volunteers or in
70 limited circumstances licensed representatives to sell, furnish, tender, or serve the nonintoxicating
71 beer, nonintoxicating craft beer, wine, liquor, or hard cider.

72 (h) Licensed representatives of an authorized and approved brewer, resident brewer, beer
73 distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-
74 distillery, and liquor broker representatives may attend a private fair and festival and discuss their
75 respective products but shall not engage in the selling, furnishing, tendering, or serving of any
76 nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed
77 representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-
78 distillery that has agreed in writing to conduct sampling and off-premises consumption sales of
79 their respective licensee's products at the private fair and festival, may discuss their respective
80 products and engage in the limited giving of complimentary samples in accordance with §11-16-6a
81 (c) and (d), §60-4-3a (a) and (b), and §60-4-3b (b) and (m) of this code; and the selling of sealed
82 bottles or cans of their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider,
83 or liquor products for off-premises consumption. All taxes and fees must be paid on lawful sales.

84 (i) A license issued under this section and the licensee are subject to all other provisions of
85 this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by
86 rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders
87 as the circumstances of each private fair and festival require, including without limitation, the right
88 to revoke or suspend immediately any license issued under this section prior to any notice or

89 hearing, notwithstanding §60-7-13a of this code: *Provided, however,* That under no circumstances
90 may the provisions of §60-7-12 of this code be waived or an exception granted with respect
91 thereto.

92 (j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this
93 code, including but not limited to, dual licensing simultaneous to any other qualified permit holders
94 as defined in §60-7-1 et seq. of the code, which is expressly authorized.

95 (k) A private fair and festival licensee who executes a written agreement with a licensed
96 brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or their
97 licensed representatives is jointly liable and responsible for any violations of this article.

98 (l) A private fair and festival licensee who executes a written agreement with a licensed
99 brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct
100 limited off-premises consumption sales shall not have any pecuniary interest, share, or
101 percentage in any sales of sealed nonintoxicating beer, nonintoxicating craft beer, wine, hard
102 cider, or liquor.

103 (m) A private fair and festival licensee who executes a written agreement with a licensed
104 brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct
105 limited off-premises consumption sales may charge them a flat booth rental fee.

106 (n) A private fair and festival licensee, licensed brewer, resident brewer, winery, farm
107 winery, distillery, mini-distillery, micro-distillery, or their licensed representatives who permits
108 members or guests to consume, on the private fair and festival's licensed premises, any
109 nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor, that was purchased as
110 an off-premises consumption sale, shall have their respective license immediately suspended,
111 and that conduct is grounds for revocation of their license.

**§60-7-8g. Special permit for a qualified permit holders in a private outdoor designated area;
license fee and application; license subject to provisions of article.**

1 (a) There is hereby created a special permit designated Class S4 for a qualified permit

2 holder operating in a private outdoor designated area approved by a municipality as set forth in §8-
3 12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating
4 craft beer for on-premises consumption at a certain public property designated as a private
5 outdoor designated area where multiple private club license type licensees, and also private fair
6 and festival licensees authorized by §60-7-8a of the code, who apply and obtain a qualified permit
7 holder permit shall share liability and responsibility. Each qualified permit holder may sell, furnish,
8 or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this
9 section.

10 (b) Definitions:

11 (1) "Private outdoor designated area" means public property that has become a legally
12 demarcated area established by a municipal ordinance as set forth in §8-12-26 of this code for the
13 consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

14 (2) "Qualified permit holder" means the holder of a Class A license, as well as a properly
15 insured Class S2 license holder who elects to operate within a private outdoor designated area,
16 issued under §60-7-1 *et seq.* of this code.

17 (c) To be eligible for the license authorized by subsection (a) of this section, the qualified
18 permit holder shall:

19 (1) Operate in a private outdoor designated area created by municipal ordinance as set
20 forth in §8-12-26 of this code, and provide the commissioner a copy of the certified ordinance from
21 the municipality;

22 (2) Apply to the commissioner for the special permit prior to operating in an approved
23 private outdoor designated area on an application provided by the commissioner;

24 (3) Pay a nonrefundable non-prorated annual license fee of \$100 to the commissioner;

25 (4) Be in compliance with all state and federal laws and be in good standing with the
26 commissioner;

27 (5) Be approved by the municipality to operate in the private outdoor designated area;

28 (6) Provide the days and hours of operation in the private designated area which cannot
29 exceed the stated private club hours of operation;

30 (7) Provide, in conjunction with the municipality, adequate restroom facilities, whether
31 permanent or portable, to serve the members and guests who will be attending the private outdoor
32 designated area;

33 (8) Provide an executed agreement between all qualified permit holders stating that each
34 qualified permit holder is jointly and severally liable for any improper acts or conduct committed in
35 the operation of the private outdoor designated area in conjunction with operation of their Class A
36 license;

37 (9) Provide a security plan for the private outdoor designated area indicating: All qualified
38 permit holders' licensed premises where alcohol will be served in approved non-glass containers;
39 all entrances and exits in order to verify members', patrons', and guests' ages, and to assess
40 whether a member, patron, or guest is under 21 years of age or intoxicated; and a plan to provide
41 for the public health and safety of members, patrons, and guests;

42 (10) Provide a floorplan for the private outdoor designated area indicating a legally
43 demarcated area that is bounded or utilizes signage to safely account for the ingress and egress of
44 members, patrons, and guests who will be within the private outdoor designated area and also be
45 permitted to carry liquor, wine, nonintoxicating beer, and nonintoxicating craft beer on and off of
46 the qualified permit holders' licensed premises and within the private outdoor designated area
47 when contained in an approved non-glass container. The private outdoor designated area's
48 floorplan does comprise a separate licensed premises authorized only for the lawful consumption
49 of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed
50 premises when lawfully purchased from a qualified permit holder;

51 (11) Meet and be subject to all other private club license type requirements;

52 (12) Provide a plan to prevent members, guests, and patrons from bringing, consuming, or
53 selling alcohol not in an approved non-glass container in the private outdoor designated area; and

54 (13) Use an age verification system approved by the commissioner.

55 ~~(e)~~ (d) As set forth in §8-12-26 of this code a municipality may, by ordinance, establish a
56 private outdoor designated area where the municipality may zone, set requirements and establish
57 conditions for safe operation of private outdoor designated area by qualified permit holders.

58 ~~(d)~~ (e) A municipality shall be responsible for the enforcement of any criminal violations
59 occurring in a private outdoor designated area and shall report such violations to commissioner for
60 a determination of any violation of §11-16-1 *et seq.* and chapter 60 of this code.

61 ~~(e)~~ (f) The commissioner shall enforce any violations of §11-16-1 *et seq.* and chapter 60 of
62 this code committed by qualified permit holders against their permit and their Class A license.

63 ~~(f)~~ (g) A qualified permit holder that is separately authorized for an outdoor dining area or
64 sidewalk dining area may continue to operate those areas in conjunction with the private outdoor
65 designated area subject to the commissioner's requirements. Notwithstanding any other section of
66 the code, a private outdoor designated area is authorized to simultaneously host multiple qualified
67 permit holders as defined in §60-7-1 *et seq.* of the code.

68 ~~(g)~~ (h) A licensee permitted under this section is subject to all other provisions of this article
69 and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or
70 order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as
71 required by the circumstances of for the operation of qualified permit holders in each private
72 outdoor designated area. The commissioner may revoke or suspend immediately any permit
73 issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code:
74 *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be
75 waived or an exception granted with respect thereto.

NOTE: The purpose of this bill is to expressly authorize a private outdoor designated area to simultaneously host multiple qualified permit holders, including but not limited to a special S2 licensed and properly insured private fair and festival.

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