

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 5631

FISCAL  
NOTE

By Delegate Rowe

[Introduced February 12, 2024; Referred to the  
Committee on Political Subdivisions then the  
Judiciary]

1 A BILL to amend and reenact §8-12-26 of the Code of West Virginia, as amended, and to amend  
 2 and reenact §60-7-8g of said code, all relating to authorizing municipalities to create  
 3 private outdoor or indoor designated areas; providing that if a municipality has passed an  
 4 ordinance creating private outdoor or indoor designated areas for the consumption of beer,  
 5 liquor and wine shall also be permitted in those areas; and providing that if a municipality  
 6 has passed an ordinance creating private outdoor or indoor designated areas for the  
 7 consumption of beer, a special permit designated Class S4 for a qualified permit holder  
 8 operating in a private outdoor or indoor designated area approved by a municipality shall  
 9 also permit the consumption of liquor and wine.

*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 or indoor 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 or  
 3 indoor 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 or indoor designated area;

7 (2) The proposed outdoor or indoor designated area or proposed licensed premises shall  
 8 be 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 or indoor designated area;

12 (4) That certain public property that is legally demarcated by the ordinance is within the  
13 proposed private outdoor or indoor designated area and such area is in compliance with the  
14 comprehensive plan or zoning ordinances of the municipality, if the municipality has so adopted,  
15 for the consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer: Provided,  
16 That if a municipality has passed an ordinance creating private outdoor or indoor designated areas  
17 for the consumption of beer, notwithstanding any provision of law to the contrary liquor and wine  
18 shall also be permitted in those areas

19 (5) The specific boundaries of the private outdoor or indoor designated area, including  
20 street addresses;

21 (6) The number, spacing, and type of signage designating the private outdoor or indoor  
22 designated area;

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

26 (8) The estimated number of personnel needed to ensure public safety and efficient  
27 operations in the private outdoor or indoor designated area;

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

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

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

35 (c) The municipality shall provide to the commissioner notice of the approval of the private

36 outdoor or indoor designated area and identify the qualified permit holders that will be applying for  
37 permits set forth in §60-7-8g of this code.

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

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

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

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

**§60-7-8g. Special permit for a qualified permit holders in a private outdoor or indoor 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 or indoor designated area approved by a municipality as set  
3 forth in §8-12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and  
4 nonintoxicating craft beer for on-premises consumption at a certain public property designated as  
5 a private outdoor or indoor designated area where multiple private club license type licensees who  
6 apply and obtain a qualified permit holder permit shall share liability and responsibility. Each  
7 qualified permit holder may sell, furnish, or serve liquor, wine, nonintoxicating beer, and  
8 nonintoxicating craft beer as provided in this section: Provided, That if a municipality has passed  
9 an ordinance creating private outdoor or indoor designated areas for the consumption of beer,  
10 notwithstanding any provision of law to the contrary liquor and wine shall also be permitted in  
11 those areas, a special permit designated Class S4 for a qualified permit holder operating in a

12 private outdoor designated area shall also permit the consumption of liquor and wine.

13 (b) Definitions:

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

17 (2) "Qualified permit holder" means the holder of a Class A license issued under §60-7-1 *et*  
18 *seq.* of this code.

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

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

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

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

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

29 (5) Be approved by the municipality to operate in the private outdoor or indoor designated  
30 area;

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

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

36 (8) Provide an executed agreement between all qualified permit holders stating that each  
37 qualified permit holder is jointly and severally liable for any improper acts or conduct committed in

38 the operation of the private outdoor or indoor designated area in conjunction with operation of their  
39 Class A license;

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

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

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

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

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

60 (c) As set forth in §8-12-26 of this code a municipality may, by ordinance, establish a  
61 private outdoor or indoor designated area where the municipality may zone, set requirements and  
62 establish conditions for safe operation of private outdoor or indoor designated area by qualified  
63 permit holders.

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

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

69 (f) A qualified permit holder that is separately authorized for an outdoor or indoor dining  
70 area or sidewalk dining area may continue to operate those areas in conjunction with the private  
71 outdoor or indoor designated area subject to the commissioner's requirements.

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

NOTE: The purpose of this bill is to require a municipality that has passed an ordinance creating private outdoor or indoor designated areas for the consumption of beer, then liquor and wine shall also be permitted in those areas.

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