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## **WEST VIRGINIA CODE**

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

#### **ARTICLE 4. LICENSES.**

##### **§60-4-1. Grant and revocation of licenses; issuance or renewal for calendar year.**

The commission shall grant and revoke licenses in accordance with the provisions of this article. Licenses shall be issued and renewed for the period of the calendar year.

##### **§60-4-2. Licenses for manufacture.**

The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

- (1) Distilleries in which only alcoholic liquors other than wine or beer is manufactured;
- (2) Wineries in which only wines are manufactured;
- (3) Breweries in which beer is manufactured;
- (4) Bottling plants in which beer only is bottled;
- (5) Industrial plants in which alcohol is distilled, manufactured or otherwise produced for scientific, chemical, mechanical or industrial purposes;
- (6) Farm wineries in which only wines are manufactured; and
- (7) Mini-distilleries in which only alcoholic liquors other than wine, beer or nonintoxicating beer are manufactured.

##### **§60-4-3. To whom licensed manufacturer may sell.**

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: *Provided*, That a holder of a winery or a farm winery license may sell wines and a holder of a distillery or a mini-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of section three-a of this article and section two, article six of this chapter. Hours of retail sale by a winery or a farm winery or distillery or a mini-distillery are subject to regulation by the commissioner. A winery, distillery, farm winery or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.

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

(a) *Sales of liquor.* — An operator of a distillery or a mini-distillery may offer liquor for retail sale to customers from the distillery or the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any liquor on the premises of the distillery or the mini-distillery: *Provided*, That a licensed distillery or mini-distillery may offer complimentary samples per this subsection of alcoholic liquors manufactured by that licensed distillery or mini-distillery for consumption on the premises only on Sundays beginning at ten o'clock a.m. in any county in which the same has been approved as provided for in section three-pp, article one, chapter seven of this code.

(b) *Retail sales.* — Every licensed distillery or mini-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six, article three-a of this chapter and the provisions of articles three and four of this chapter applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery or mini-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery or the mini-distillery for off-premises consumption shall be subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That no liquor sold by the distillery or mini-distillery shall be priced less than the price set by the commissioner pursuant to section seventeen, article three-a of this chapter.

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

(e) *Limitations on licensees.* — No distillery or mini-distillery may sell more than three thousand gallons of product at the distillery or mini-distillery location the initial two years of licensure. The distillery or mini-distillery may increase sales at the distillery or mini-distillery location by two thousand gallons following the initial twenty-four-month period of licensure and may increase sales at the distillery or mini-distillery location each subsequent twenty-four-month period by two thousand gallons, not to exceed ten thousand gallons a year of total sales at the distillery or mini-distillery location. No licensed mini-distillery may produce more than fifty thousand gallons per calendar year at the mini-distillery location. No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license.

### **§60-4-3b. Winery and farm winery license to manufacture and sell.**

(a) *Sales of wine.* — An operator of a winery or farm winery may offer wine produced by the winery or farm winery for retail sale to customers from the winery or farm winery for consumption

off the premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any wine on the premises of the winery or farm winery, unless such winery or farm winery has obtained a multicapacity winery or farm winery license: *Provided*, That a licensed winery or farm winery may offer complimentary samples per this subsection of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at ten o'clock a.m. in any county in which the same has been approved as provided in section three-pp, article one, chapter seven of this code.

(b) *Retail sales.* — Every licensed winery or farm winery shall comply with the provisions of articles three, four and eight of this chapter as applicable to wine retailers, wineries and suppliers when properly licensed in such capacities.

(c) *Payment of taxes and fees.* — The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in article eight of this chapter.

(d) *Advertising.* — A winery or farm winery may advertise a particular brand or brands of wine produced by it, and the price of the wine subject to federal requirements or restrictions.

(e) *Limitations on licensees.* — A winery or farm winery must maintain separate winery or farm winery supplier, retailer and direct shipper licenses when acting in one or more of those capacities, and must pay all associated license fees, unless such winery or farm winery holds a license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. No more than one winery or farm winery license may be issued to a single person or entity and no person may hold both a winery and a farm winery license.

#### **§60-4-4. Purchase and resale of alcoholic liquors and ethyl alcohol by wholesale druggists.**

The commission may grant to wholesale druggists license to purchase alcoholic liquors at wholesale from or through the commission for the purpose of resale within the state. Such wholesale druggists shall have the right to purchase ethyl alcohol, for nonbeverage purposes, at wholesale, and for resale to pharmacists, or druggists or drugstores employing a duly licensed pharmacist, having a regular place of business, or to other persons licensed to purchase ethyl alcohol from the commission, from distillers, manufacturers, jobbers or other wholesale druggists, whether within or without the state, and whether the seller has a permit or license from the commission to sell same, and ship and transport or cause same to be shipped and transported to their places of business, upon filing with the commission at the time of or prior to such purchase a copy of the purchase order for same, together with a statement in writing showing approximately when, and in what manner the ethyl alcohol so purchased will be shipped or transported to their places of business.

**§60-4-5. Licenses for purchase at wholesale for industrial or scientific uses; wine for sacramental purposes.**

The commission may grant licenses to persons to purchase alcoholic liquors at wholesale from or through the West Virginia liquor control commission for industrial, or scientific uses, or for use in institutions as provided in article six, section five of this chapter, and may, by special permit for such fee as the commission may fix, authorize transactions at wholesale for the purchase of alcohol for scientific, chemical, mechanical or industrial purposes only; but, no license fee shall be required from institutions, departments, or agencies of the state government or any political subdivision thereof.

The commission may issue, without fee, special permits authorizing religious organizations to purchase, upon orders approved by the commission, wine for sacramental purposes.

**§60-4-6. Purchase and resale of alcoholic liquors and ethyl alcohol by retail druggists.**

The commission may issue licenses to retail druggists to sell, upon prescription, and for the purposes provided for in this chapter, alcoholic liquors purchased from the commission. Any pharmacist, or retail druggist or drugstore employing a duly licensed pharmacist, having a regular place of business, may, upon filing with the commission, at the time of or prior to any purchase, a copy of the purchase order together with a written statement showing approximately when and in what manner any ethyl alcohol purchased will be shipped or transported, purchase from distillers, manufacturers, jobbers or wholesalers, whether within or without the state, and whether the seller has a permit or license to sell the same, ethyl alcohol for use in compounding or manufacturing any of the medical or other preparations mentioned in section four of article six of this chapter, and ship and transport or cause same to be shipped and transported to his place of business.

**§60-4-7. Stills used for laboratory or pharmaceutical purposes.**

The commission shall license without fee a still used solely for laboratory purposes in an educational institution and a still used solely for pharmaceutical purposes.

**§60-4-7a. Individuals authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use.**

The commission shall issue a license without fee authorizing an individual to manufacture ethyl alcohol solely for personal use by the individual in the production of gasohol and not for sale.

For purposes of this section, the term "gasohol" means any product suitable for use as a fuel in an internal combustion engine containing at least ten percent alcohol distilled from agricultural products or from any other nonpetroleum organic material.

**§60-4-8. Stills used by commercial chemists for laboratory purposes.**

The commission shall license a still used by a commercial chemist for laboratory purposes only, and not used for the purpose of the manufacture of alcoholic liquors for resale, at a fee of five dollars.

**§60-4-9. Separate license for each place of business; change §60-4-10 of location.**

Each separate place of business shall require a separate license. Licenses shall not be transferable but, with the approval of the commission in such form and manner as the commission may prescribe, may be amended to change the location of the business licensed.

**§60-4-10. Notice of application for license.**

A person who desires to apply for a license authorized by the provisions of this chapter shall, not more than thirty nor less than ten days before the filing of formal application, give notice of his intention. He shall give notice by posting a statement of his intention in such form as the commission may require at the front door or principal entrance of the place where the business is to be conducted. He shall also publish notice, in such form as the commission may require, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which he intends to do business: *Provided, however,* That retail druggists desiring to sell alcoholic liquors on prescriptions shall not be subject to the provisions of this section: *Provided further,* That such retail druggists shall file formal application in writing with the commission and shall pay the license fee.

**§60-4-11. Time to file application and pay fee.**

Not less than ten days after giving notice of his intention, a person desiring to apply for a license shall file formal application, in writing, with the commission and shall pay the license fee.

**§60-4-12. License granted or refused within fifteen days; refund of fee.**

Within fifteen days after the filing of formal application for a license the commission shall either grant or refuse the license.

If the commission refuses to grant the license he shall refund the license fee.

**§60-4-13. When license to be refused.**

The commission shall refuse the license if it finds that:

- (1) The applicant is not a suitable person;
- (2) The place to be occupied by the applicant is not a suitable place;
- (3) A sufficient number of licenses have already been issued.

**§60-4-14. Annual payment of license fee; effect of failure to pay.**

A person possessing a license issued under the provisions of this chapter shall pay the fee annually on or before the first day of January of each year. If the license fee is not paid on that day, the license shall be automatically revoked, unless the commission shall, for good cause, grant an extension in writing for not more than ten days.

**§60-4-15. Amount of license fees.**

A person to whom a license is issued under the provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

- (1) Distilleries, one thousand five hundred dollars;
- (2) Wineries, one thousand five hundred dollars;
- (3) Breweries, one thousand five hundred dollars;
- (4) Bottling plants, one hundred dollars;
- (5) Wholesale druggists, fifty dollars;
- (6) Institutions, ten dollars;
- (7) Industrial use, fifty dollars;
- (8) Industrial plants producing alcohol, two hundred fifty dollars;
- (9) Retail druggists, ten dollars;
- (10) Farm wineries, fifty dollars;
- (11) Mini-distilleries, fifty dollars.

**§60-4-16. Records and monthly reports required of licensee.**

The commission shall prescribe records to be kept by licensees and shall require regular reports at least every thirty days of the amounts and kinds of alcoholic liquors manufactured, sold, or kept in stock under the authority of a license issued according to the provisions of this article.

Records which the licensee is required to keep shall be open at all reasonable times to inspection by the commission or its agents.

**§60-4-17. Rules, regulations and reports necessary for effective administration.**

The commission shall have the authority to prescribe such rules and regulations and to require the reporting of such information by licensees as may be necessary for the effective administration of the provisions of this chapter.

**§60-4-18. Taxation, etc., of licensees by municipal corporations.**

A municipal corporation shall not impose a fee or a special tax as a condition upon the exercise of a license issued under the provisions of this chapter.

**§60-4-19. When license revoked.**

The commissioner may revoke a license issued under this article upon a finding that:

- (1) The licensee is not a suitable person;
- (2) The place occupied by the licensee is not a suitable place;
- (3) The licensee has violated a provision of this chapter or a regulation made by the commissioner under the authority of this chapter; or
- (4) The licensee has failed to comply with the spirit and intent of this chapter by encouraging intemperance, the unlawful consumption of alcoholic liquors, or otherwise.

**§60-4-20. Notice of and hearing on revocation; disposition of stock.**

Before revoking a license issued under the authority of this chapter, the commission shall give at least ten days' notice to the licensee. Notice shall be in writing, shall state the reason for revocation and shall designate a time and place when the licensee may show cause why the license should not be revoked. Notice shall be sent by registered mail to the address for which the license was issued. The licensee may, at the time designated for the hearing, produce evidence in his behalf and be represented by counsel. On the final revocation of a license or licenses the commission shall immediately take over the stocks of liquors possessed by the licensee, and pay to the licensee the amount paid by him to the state for such stocks less the amount necessary to defray the costs incurred by the commission in the revocation proceedings.

**§60-4-21. Appeal.**

A decision of the commission granting or revoking, or refusing to grant or to revoke a license authorized by this chapter shall be subject to judicial review upon the appeal of a licensee and applicant for a license, a resident of the community in his own behalf or in behalf of the community, or an interested party who is dissatisfied with the decision of the commission in granting, refusing to grant, revoking or refusing to revoke a license authorized by this chapter, but in any such judicial review only the legality of the decision of the commission under the constitution and laws of this state and the United States shall be determined.

**§60-4-22. Wholesale representatives' licenses.**

A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person convicted of a felony within ten years prior to his or her application for such license; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from the first day of July until the thirtieth day of June next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be one hundred dollars. The fee for any

license granted for the remainder of any license year between the first day of January and the thirtieth day of June of the same calendar year shall be fifty dollars.

No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license. No member of the Legislature or the spouse of any such member may be granted a license. Nor may any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license.

In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the state capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers or processors of alcoholic liquor they represent. A licensed person may not share, divide or split his or her salary with any person other than his wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding one thousand dollars or imprisoned in jail not exceeding twelve months, or be subject to both such fine and imprisonment in the discretion of the court.



**§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.**

(a) For purposes of this section:

(1) "Exotic entertainment" means live nude dancing, nude service personnel or live nude entertainment, and "nude" means any state of undress in which male or female genitalia or female breasts are exposed.

(2) "Places set apart for traditional family-oriented naturism" means family nudist parks, clubs and resorts chartered by the American association for nude recreation or the naturist society, including all of their appurtenant business components, and also including places temporarily in use for traditional family-oriented naturist activities.

(b) No person may operate any commercial facility where exotic entertainment is permitted or offered unless such person is granted a license by the commissioner to operate a facility where exotic entertainment may be offered. The provisions of this subsection apply whether or not alcoholic liquor, wine or nonalcoholic beer is legally kept, served, sold or dispensed in a facility, or purchased for use in a facility, or permitted to be brought by others into a facility and whether or not such person holds any other license or permit issued pursuant to chapter sixty of this code.

(c) A licensee is subject to all the regulatory provisions of article seven of this chapter, whether or not the licensee is otherwise a private club. The commissioner shall have all the powers and authorization granted under article seven of this chapter to regulate, restrict and sanction a licensee under this section. No licensee may purchase, keep, sell, serve, dispense or purchase for use in a licensed facility, or permit others to bring into the facility, any alcoholic liquor, wine or nonintoxicating beer without having the appropriate license therefor. No licensee may operate a private club without being licensed therefor.

(d) No person or licensee may allow a person under the age of eighteen years to perform as an exotic entertainer. No person under the age of twenty-one years, other than a performing exotic entertainer, may be allowed to be in a commercial facility on any day on which any exotic entertainment is offered therein. No licensee may hold special nonalcoholic entertainment events for persons under age twenty-one pursuant to the provisions of section eight, article seven of this chapter in the licensed facility.

(e) Any person operating a commercial facility where exotic entertainment is offered on the effective date of this section may apply to the commissioner for a license to operate a facility where exotic entertainment may be offered. Applications must be filed with the commissioner on or before the first day of July, two thousand; thereafter no application for license may be received by the commissioner. The commissioner may issue a license to a person complying with the provisions of this chapter. Upon application for renewal, the commissioner shall annually, on the first day of July of each succeeding year, renew the license of any licensee then in compliance with the provisions of this chapter. The commissioner shall specify the form of application and information required of applicants and licensees. No license which has lapsed, been revoked or expired without renewal may be reissued.

(f) A person to whom a license is issued or renewed under the provisions of this section shall pay annually to the commissioner a license fee of three thousand dollars. A municipal corporation wherein any such licensee is located shall issue a municipal license to any person to whom the commissioner has issued a license and may impose a license fee not in excess of the state license fee.

(g) A person shall not sell, assign or otherwise transfer a license without the prior written approval of the commissioner. For purposes of this section, the merger of a licensee or the sale of more than fifty percent of the outstanding stock of or partnership interests in the licensee shall be deemed to be a sale, assignment or transfer of a license under this section. A license shall not be transferred to another location, except within the county of original licensure. A transferee of a licensed facility may apply for reissuance of the transferor's license if the transferee applicant otherwise qualifies for a license. The commissioner is authorized to propose the promulgation of a legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this subsection.

(h) This section shall be effective upon passage by the Legislature in the year two thousand. On or before the first day of May, two thousand, the commissioner shall promulgate an emergency legislative rule pursuant to the provisions of chapter twenty-nine-a of this code to effectuate the provisions of this section, and shall propose a legislative rule therefor, for consideration by the Legislature, prior to the last day of December, two thousand.

(i) Any person who violates any provision of this section, or principal of a firm or corporation which violates any provision of this section, or licensee, agent, employee or member of any licensee who violates any provision of this section, or who violates any of the provisions of section twelve, article seven of this chapter, on the premises of a licensed facility, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than three thousand dollars, or imprisoned for a period not to exceed one year, or both so fined and imprisoned.

(j) The provisions of this section do not apply to places set apart for traditional family-oriented naturist activities.